

APPENDIX

U.S. SUPREME COURT

Supreme Court of the United States
OCTOBER TERM, 1968

No. 19

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
Petitioner,

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL., *Respondents.*

ON WRITS OF HABEAS CORPUS TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Supreme Court of the United States

OCTOBER TERM, 1967

No. 978

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL., *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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APPENDIX

I

Relevant Docket Entries

1. March 31, 1967—Complaint filed by Washington Metropolitan Area Transit Commission for Injunction, Declaratory Relief and Enforcement of Act in the United States District Court for the District of Columbia.
2. April 4, 1967—Answer filed by Universal Interpretive Shuttle Corporation in the United States District Court for the District of Columbia.
3. April 5, 1967—Motion For Leave To File Representation Of Interest, To Present Evidence, File Briefs And To Take Part In All Further Proceedings filed by United States and granted by Judge McGarraghy in the United States District Court for the District of Columbia.
4. April 5, 1967—Motion Of D. C. Transit System, Inc. For Leave To Intervene As A Party Plaintiff filed in United States District Court for the District of Columbia.
5. April 7, 1967—Motion Of Plaintiff, Defendant And The United States For Consolidation Of Hearing With Trial On The Merits and Advancement of Trial Date filed and granted by Judge McGarraghy in the United States District Court for the District of Columbia.
6. April 7, 1967—Motion Of D. C. Transit System, Inc. For Leave To Intervene As A Party Plaintiff granted by Judge McGarraghy in the United States District Court for the District of Columbia.

7. April 13, 1967—Motion Of Washington Sightseeing Tours, Inc. For Leave To Intervene As A Party Plaintiff filed and granted by Judge Jones in the United States District Court for the District of Columbia.
8. April 18, 1967—Motion Of Blue Lines, Inc. And White House Sightseeing Corp. For Leave To Intervene As Party Plaintiffs filed and granted by Judge Jones in the United States District Court for the District of Columbia.
9. April 25-26, 1967—Trial on the merits conducted before Judge Corcoran in the United States District Court for the District of Columbia.
10. May 1, 1967—Order entered by Judge Corcoran in the United States District Court for the District of Columbia dismissing the complaint and denying Plaintiffs' petitions for injunction and declaratory relief.
11. June 30, 1967—Per Curiam Order And Judgment entered by United States Court of Appeals for the District of Columbia reversing judgment of District Court dismissing the complaint and denying Plaintiffs' petitions for injunction and declaratory relief and remanding for appropriate further proceedings.
12. August 3, 1967—Petition For Rehearing En Banc filed in the United States Court of Appeals for the District of Columbia.
13. October 3, 1967—Order of the United States Court of Appeals for District of Columbia Circuit denying petition for a rehearing en banc.
14. December 31, 1967—Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia filed in the Supreme Court of the United States.
15. March 4, 1968—Order of the Supreme Court of the United States granting petition for a Writ of Certiorari.

II

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 793-67

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Plaintiff,

v.

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION (A California Corporation), Ralph S. Cunningham, Agent, Arent, Fox, Kintner, Plotkin & Kahn, 1815 H Street, N. W., Washington, D. C., *Defendant.***Complaint**

(For Injunction, Declaratory Relief, and Enforcement of Act)

I

This is a civil act brought by the Washington Metropolitan Area Transit Commission ("Commission") over which this Court has jurisdiction pursuant to the provisions of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), Title II, Article XII, Section 18(a) and 18(b), 74 Stat. 1047 (September 15, 1960), D. C. Code, Section 1-1410 (1961 Ed.), as amended, 76 Stat. 764 (October 9, 1962), D. C. Code Section 1-1410(a) (Supp. III 1964), and consent legislation thereto, Public Law 86-794, Section 6, 74 Stat. 1051, to enjoin certain acts of the defendant which will constitute a violation of the provisions of the Compact, and to enforce compliance with certain provisions of said Compact by the defendant.

II

The defendant, Universal Interpretive Shuttle Corporation, is a California corporation. It is alleged that the laws

of the District of Columbia require the defendant to qualify to do business in the District of Columbia and that it intends to do so on or before May 1, 1967. In the interim, it has designated Ralph S. Cunningham, attorney at law, Arent, Fox, Kintner, Piotkin, and Kahn, 1815 H Street, N. W., Washington, D. C., as its special agent to receive service of process. (Letter of designation, Attachment "A" hereto). The corporation is about to engage in transporting persons for hire by motor vehicle between points within the District of Columbia, all of such transportation being within the Metropolitan District, as designated in Article I, Compact. It has entered into an agreement with the United States Department of Interior, whereby it has agreed to engage in the transportation of passengers for hire over public streets in that area of the District of Columbia known and designated as the "Mall", beginning on May 1, 1967. The defendant will provide the transportation in its vehicles, operated by its employees, and collect a fare or charge directly from each passenger.

III

Jurisdiction to regulate such transportation is conferred upon the Commission by Section 1(a) of the Compact which states that "This act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation services, except . . ." None of the exceptions are applicable to this transportation.

Section 4(a), Article XII, of the Compact provides that "No person shall engage in transportation subject to this act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; . . ." The Commission has not issued a certificate of public convenience and necessity to the defendant. After learning that the defendant had agreed to render transportation for hire

of persons between two points within the Metropolitan District, the Commission, by letter, informed the defendant of the provisions of Section 1(a) and Section 4(a) of the Compact (hereinafter referred to), and that the Rules of the Commission provide for the filing for such authority, and that appropriate application forms are available upon request. (Letter of March 27, 1967, to Universal Interpretive Shuttle Corporation from Melvin E. Lewis, Acting Executive Director of the Commission; Attachment "B" hereto).

IV

Notwithstanding the plain language of the Compact, the defendant has informed the Commission, by letter dated March 30, 1967 (Attachment "C" hereto), that, based on the advice of the Department of the Interior that the tour service required by the contract would be subject only to the requirements imposed by the Secretary of the Interior through the Director of the National Park Service, the defendant will not "apply for a certificate of public convenience and necessity from the Washington Metropolitan Area Transit Commission at this time."

V

It affirmatively appears that the defendant (a) will engage in the transportation of persons for hire between two or more points in the Metropolitan District on or after May 1, 1967, and (b) will engage in such transportation without there being in force a certificate of public convenience and necessity issued by the Commission authorizing the defendant to engage in such transportation. Unless the defendant is restrained from performing such transportation, the public will not be afforded the protection contemplated and required by the law as set forth in the Compact, to-wit: (a) a determination by the Commission that the defendant is fit, willing, and able to perform such trans-

portation properly and to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission thereunder, as is required by Section 4(b) of the Compact; (b) that no carrier shall charge any fare other than that specified in a tariff filed by it and approved by the Commission, as is required by Section 5(d) of the Compact, and (c) that the carrier has complied with the regulations of the Commission governing policies of insurance, as is required by Section 9(a) of the Compact.

WHEREFORE, the plaintiff demands that this Court permanently enjoin said defendant and its employees from engaging in any transportation subject to the provisions of Section 1(a), Article XII, of the Compact unless and until such transportation is authorized by a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission, that this Court enter judgment declaring that only such transportation prescribed and authorized by the Commission may be performed by the defendant between two points in the Metropolitan District, and that this Court require the defendant to comply with Section 4(a), Article XII of the Compact by not performing any transportation of persons for hire between two or more points in the Metropolitan District unless and until such transportation is authorized by a certificate of public convenience and necessity issued by said Commission.

/s/ RUSSELL W. CUNNINGHAM
 Russell W. Cunningham
General Counsel

WASHINGTON METROPOLITAN
 AREA TRANSIT COMMISSION
 1815 North Fort Myer Drive
 Arlington, Virginia 22209

Dated: March 31, 1967

Attachment A**UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION****100 UNIVERSAL CITY PLAZA****UNIVERSAL CITY, CALIFORNIA 91608****March 29, 1967**

**Washington Metropolitan Area
Transit Commission
1815 North Fort Myer Drive
Arlington, Virginia**

Gentlemen:

I, Jay S. Stein, am a duly elected officer of Universal Interpretive Shuttle Corporation, a California corporation with headquarters at 100 Universal City Plaza, Universal City, California.

On behalf of Universal Interpretive Shuttle Corporation, I hereby appoint Harry M. Plotkin and Ralph S. Cunningham, Jr., or either of them, as special agents to accept service of process issued by the United States District Court for the District of Columbia on behalf of the Washington Metropolitan Area Transit Commission and for no other purpose. Messrs. Plotkin and Cunningham are partners in the law firm of Arent, Fox, Kanner, Plotkin & Kahn and may be found at 1100 Federal Bar Building, 1815 H Street, N. W., Washington, D. C. 20006.

Very truly yours,

**/s/ JAY S. STEIN
Jay S. Stein
Vice President**

Attachment B

March 27, 1967

CERTIFIED RETURN RECEIPT REQUESTED

Executive Officer
Universal Interpretive Shuttle Corporation
Universal City, California

Dear Sir:

I understand that your company, Universal Interpretive Shuttle Corporation, has been awarded a contract by the United States Department of The Interior to render a service involving transportation of persons for hire between points in the District of Columbia.

This is to formally call your attention to Section 4, Article XII, of the Washington Metropolitan Area Transit Regulation Compact, 74 Stat. 1037 (D. C. Code § 1-1410, 1961), which states: "No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation...."

Section 1(a), Article XII, of the Compact provides: "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service...."

A copy of the law is enclosed for your convenience. Also, a copy of the Rules of Practice and Procedure of the Commission. Application forms required by the Rules are available upon request.

Very truly yours,

MELVIN E. LEWIS

Acting Executive Director

Enclosures

Attachment C

ARENT, FOX, KINTNER, PLOTKIN & KAHN
1100 FEDERAL BAR BUILDING
1815 H STREET, N. W.
WASHINGTON, D. C. 20006
DISTRICT 7-8500

March 30, 1967

Washington Metropolitan Area
Transit Commission
1815 North Fort Myer Drive
Arlington, Virginia

Gentlemen:

We acknowledge receipt of your letter of March 27, 1967 to Universal Interpretive Shuttle Corporation. This firm acts as Washington attorneys for Universal Interpretive Shuttle Corporation.

On March 24, 1967 Universal Interpretive Shuttle Corporation entered into a contract with the United States of America to furnish a visitors interpretive shuttle service in the Mall area administered by the National Park Service in the city of Washington, D. C. In your letter you request our client to file an application for a certificate of convenience and necessity with Washington Metropolitan Area Transit Commission for the operation of the above-described service.

Prior to entering into the contract of March 24, 1967, we were advised that in the opinion of the Department of the Interior the interpretive tour service required by the contract would be subject only to the requirements imposed by the United States of America, acting in this behalf by the Secretary of the Interior through the Director of the National Park Service. Therefore, Universal Interpretive Shuttle Corporation respectfully declines to apply for a

certificate of convenience and necessity from the Washington Metropolitan Area Transit Commission at this time.

This letter is not to be construed as a waiver of any rights, remedies or defenses against any person, firm, corporation, entity or governmental body.

Sincerely,

ARENT, FOX, KINTNER, PLOTKIN & KAHN

By /s/ RALPH S. CUNNINGHAM, JR.

A member of the firm

III

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

**Affidavit in Opposition to Plaintiff's Motion for
Preliminary Injunction**

WASHINGTON,
DISTRICT OF COLUMBIA } ss:

Jay S. Stein, first having been duly sworn, deposes and says:

I am a duly elected vice president of Universal Interpretive Shuttle Corporation, the defendant in the above-styled action.

Universal Interpretive Shuttle Corporation is a California corporation. Universal Interpretive Shuttle Corporation was organized in 1967 to operate a visitors interpretive shuttle service in the Mall area administered by the National Park Service of the Department of the Interior in Washington, D.C. On March 24, 1967, our corporation entered into a contract for the provision of such service with the United States of America acting in this behalf

by the Secretary of the Interior through the Director of the National Park Service. A copy of said contract is attached hereto and incorporated herein as Exhibit A. The above-mentioned contract requires our corporation to provide a comprehensive and inspirational visitor interpretive shuttle service on a year round basis (except Christmas Day). The route will be essentially the same as that used by the National Park Service during their six week experiment in 1966.¹ Tourists utilizing this service will be carried in articulated trams of special design.² The contract requires that a guide, thoroughly conversant with the evolution of the Federal City and the workings of our government, accompany each unit of the tram. A narration approved by the National Park Service will be delivered by such guides enroute continuously throughout the tour. In addition, tour guides will be stationed at 11 points of interest along the Mall. Both the stationary guides and the guides on mobile equipment are required to wear uniforms prescribed by the National Park Service and to be thoroughly conversant with the geography and history of the Nation's Capitol.

The contract also requires that the stationary guides must be prepared to furnish information about the city and its facilities to any person regardless of whether they have paid for the visitors interpretive shuttle service or not. The contract requires that initial service be furnished at these 11 points of interest:

1. Washington Monument.
2. Bureau of Engraving and Printing.
3. Jefferson Memorial.
4. Lincoln Memorial.
5. Pan American Union, American Red Cross, Interior Department, Daughters of the American Revolution.

¹ A map of the route is attached as Exhibit B.

² An illustration of the tram is attached as Exhibit C.

6. White House, United States Treasury.
7. Museum of Arts & Industries, Army Medical Museum, Federal Aviation Agency, National Aeronautics and Space Administration.
8. Library of Congress, Supreme Court, U.S. Capitol.
9. National Gallery of Art.
10. National History Museum, Federal Bureau of Investigation, National Archives.
11. Museum of History & Technology, Post Office Department.

The contract requires our corporation to conduct both a round-trip interpretive tour service and also an interpretive shuttle service. An all-day ticket will also be available. The official Prospectus on the visitors interpretive shuttle service, issued by the National Capitol Region, National Park Service, specifies that the initial route shall be conducted exclusively on surface streets and roadways lying wholly within the Mall area of the National Park Service and under the exclusive charge and control of the Director of the National Park Service. Prior to entering into the aforementioned contract our corporation was specifically informed that in the opinion of the Department of the Interior the interpretive shuttle service required by the contract would be subject only to the requirements imposed by the United States of America acting in this behalf by the Secretary of the Interior by the Director of the National Park Service.

The contract provides for a comprehensive scheme of regulation of the activities of our corporation by the Secretary of the Interior. Under the terms of the contract the Secretary of the Interior controls both the type and number of mobile units to be utilized, the personnel policy, rates, routes, hours of service, schedule of trips, content of nar-

ration and prescribes the uniforms to be worn by guides and drivers. Under the contract the Secretary assigns government land and government improvements to our corporation for use in connection with operations. The Secretary prescribes the manner in which the accounting records of our corporation shall be maintained. Both the Secretary of the Interior and the Comptroller General of the United States have access to and the right to examine any of the pertinent books, documents and records of our corporation. The contract also requires that our corporation carry insurance in amounts approved by the Secretary against losses by fire, public liability, employee liability and other hazards. The contract requires that the United States must be named as co-insured in all liability policies carried by our corporation. The contract also requires that our corporation furnish such bonds for performance as the Secretary may, in his discretion, require. The contract also requires that the United States of America shall have at all times the first lien on all assets of our corporation utilized in the visitors interpretive shuttle service.

Our corporation entered into the abovementioned contract with express knowledge that every phase of the operation of the visitors interpretive shuttle service would be subject to close and continuous controls by the Director of the National Park Service and the Secretary of the Interior.

As of this date our corporation has been required to commit a total of approximately \$289,000 in order to fulfil the requirements of the contract. This sum includes orders for five trams necessary to commence service (a minimum of 12 trams will be required by the contract to be in operation as of May 31, 1968). The amount committed to date also includes charges for consulting services, executive payroll, legal and accounting fees and travel expenses. The contract requires our corporation to commence the visitors interpretive shuttle service by May 1, 1967. In order to

commence service by that date our corporation must commence the recruitment and training of operating personnel no later than April 10, 1967. In order to commence service by May 1, 1967, our projection shows that our corporation must commit an additional investment of approximately \$400,000 in order to satisfy the terms of the contract.

If plaintiff's Motion for Preliminary Injunction is granted by the Court grievous harm to the public interest and severe and continuing tangible and intangible injury to our corporation will result.

We are now approaching the commencement of the major tourist season for the year 1967. The Director of the National Park Service has informed us that during 1966 more than 12 million visitors from every state in the Union and virtually every nation in the world visited the Central Mall area. Projections furnished to us by Economic Research Associates estimate that approximately 15 million visitors will come to the Central Mall area in 1967. The Secretary of the Interior has determined that the needs and desires of these millions of visitors to the unique points of historical, esthetic and patriotic interest can best be served by the provision of an interpretive shuttle service. The narrations to be delivered by the guides will be approved in advance by the Secretary of the Interior and will be designed for the sole purpose of informing United States citizens and the citizens of other nations, of the true value and importance of the monuments and buildings which enshrine our national heritage. If the operation of this service is enjoined millions of visitors will suffer an intangible but very real loss. Some undetermined but substantial number of these visitors will be making the only trip of their lives to the Nation's Capitol in 1967. The loss of the tour service to such visitors is irreparable.

Contrary to the allegations contained in paragraph 8 of the Affidavit of George A. Avery in Support of Plaintiff's Motion for Preliminary Injunction, the public will not be

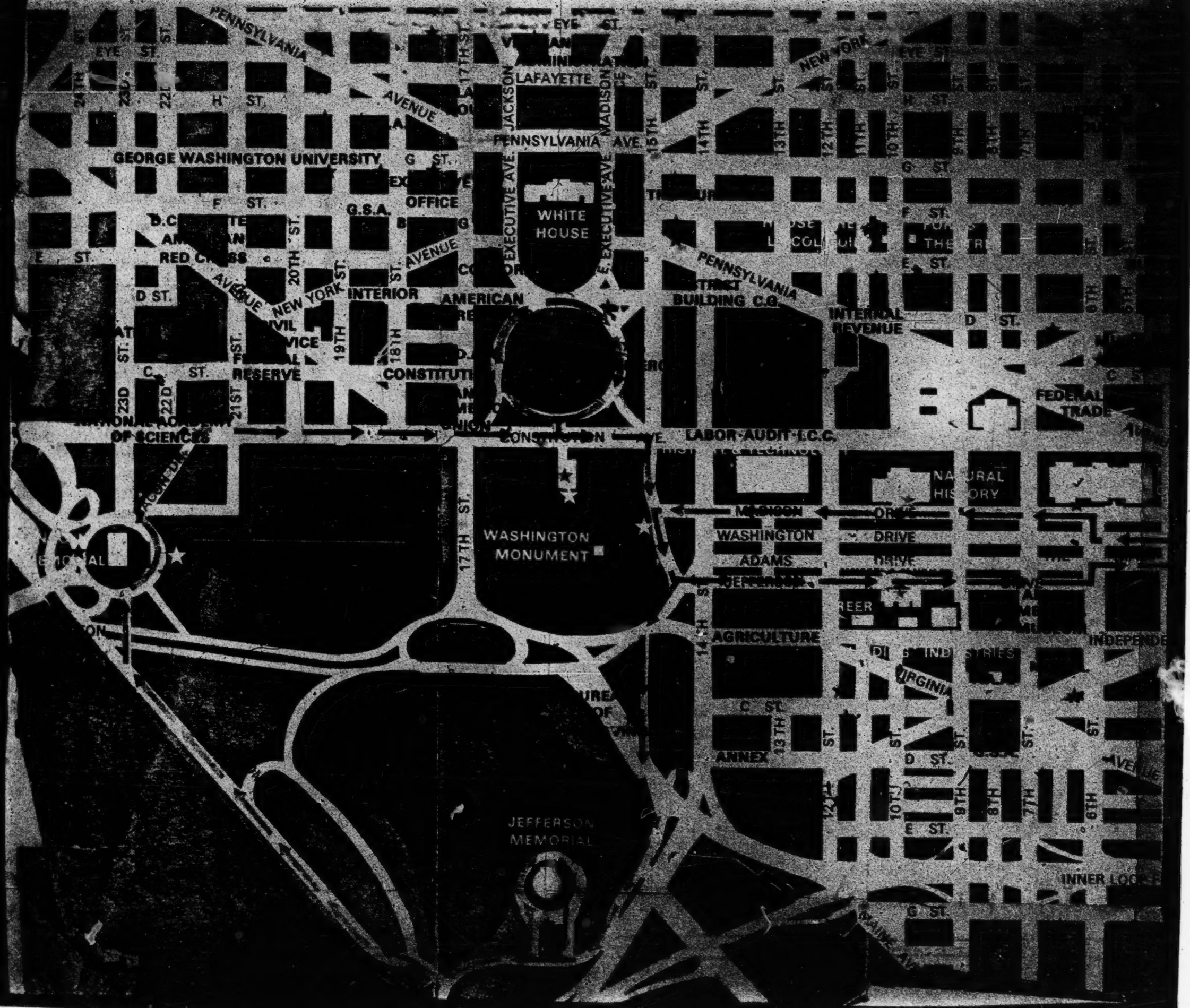
denied protection against unsafe operations, unfair, unreasonable and unregulated fares and charges and financial responsibility for bodily injury and for death or for loss of damage. As clearly demonstrated by the contract between our corporation and the United States of America, attached hereto, the Secretary of the Interior has imposed stringent and comprehensive regulations to protect the public against all of the dangers listed by Mr. Avery. Our corporation has complied in every detail with every requirement prescribed by the Secretary of the Interior for the protection of the public. Our corporation has every present intention of continuing to comply with all such regulations during the entire term of the contract.

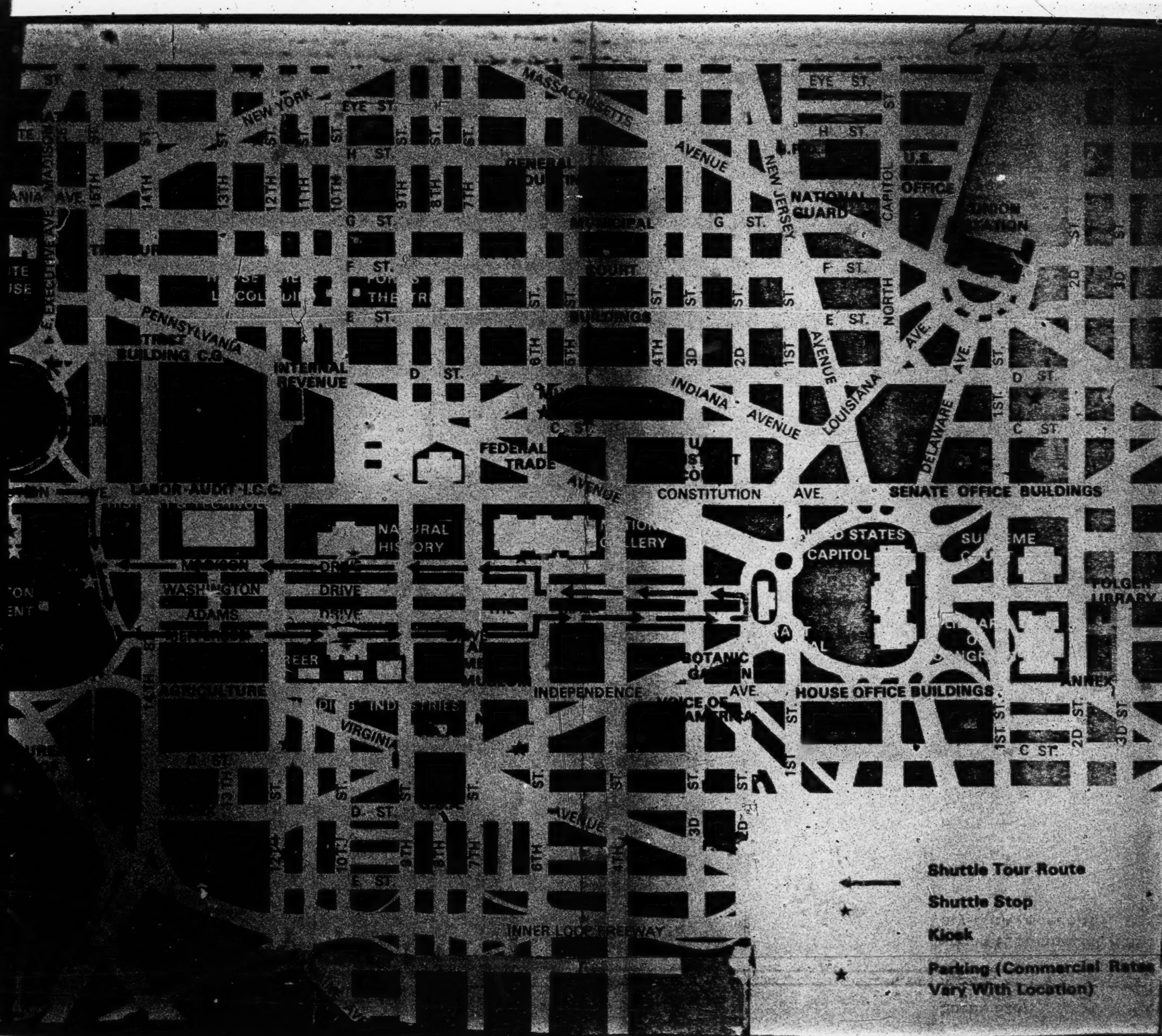
In addition to the grievous harm to the public interest that would ensue if plaintiff's Motion were granted, our corporation would suffer irreparable injury, both tangible and intangible, by the issuance of a preliminary injunction. Our contract with the United States of America requires that we commence operations on May 1, 1967. In order to commence operations by that date we must begin the recruitment of personnel no later than April 10, 1967. We must commit an initial investment of more than \$700,000 by that date. Our investment would be impaired by the issuance of an injunction. In addition, our corporation is seriously concerned about the possibility of impairment of employee morale and the defection of employees who may be recruited and trained but who must remain idle if an injunction issues.

A speedy resolution of this matter is imperative to our corporation. If an injunction should issue after the commencement of operations we project an operating loss of more than \$10,000 per week in the first week operations cease and fixed charges of more than \$5,000 per week thereafter.

/s/ JAY S. STEIN

[Jurat omitted in printing]





Shuttle Tour Route
Shuttle Stop
Kiosk

Parking (Commercial Rates Vary With Location)

IV

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

[Title omitted in printing]

**Complaint of Plaintiff-Intervenor for Injunction, Declaratory
Relief, and Enforcement of Act**

1. This Court has jurisdiction over this cause under the authority of Article III and the Fifth Amendment to the Constitution of the United States, 5 U.S.C. § 1009; 28 U.S.C. §§ 2201, 2202, and 11 D. C. Code §§ 305, 306.

2. Plaintiff-Intervenor is a District of Columbia corporation performing passenger transportation for hire by motor vehicle in the District of Columbia and adjoining counties in Maryland and Virginia pursuant to its Congressional Franchise, ("Franchise"), Act of July 24, 1956, Public Law 84-757, 70 Stat. 598, and its Certificate of Public Convenience and Necessity No. 5 issued by the Washington Metropolitan Area Transit Commission, Plaintiff, in accordance with the provisions of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), Act of September 15, 1960, Public Law 86-794, 74 Stat. 1031.

3. The Defendant is a California corporation which has designated Ralph S. Cunningham, Jr., Esquire, 1815 H Street, N. W., Washington, D. C., as its special agent to receive service of process issued by this Court on behalf of the Plaintiff.

4. As indicated in a news release of March 26, 1967 of the United States Department of the Interior, copy attached hereto, Defendant has agreed with the Interior Department to perform certain passenger transportation for hire by motor vehicle within the Mall Area of the District

of Columbia which is bounded generally by First Street, N. W. on the east, Lincoln Memorial on the west, Constitution Avenue on the north, and Independence Avenue on the south. Beginning May 1, 1967, the contemplated transportation will be performed, in vehicles owned and operated by Defendant, over public streets on a fixed schedule and route.

5. Defendant has not obtained from the Plaintiff a certificate of public convenience and necessity authorizing the contemplated operation, as required by Article XII, Section 4(a) of the Compact. Section 4(a) provides that:

No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation;...

Defendant apparently does not intend to apply for such authority prior to its commencement of operations, as indicated by the correspondence attached to Plaintiff's Complaint.

6. Plaintiff-Intervenor is now providing service in the Mall Area with its Routes A1, A2, A4, A6, A8, A9, P9, D1, D3, N1, N3, R3, 30, 32, 34, 36, 50, 54, 60, 70, 72, and its Government Minibus Service. In addition in the near future Plaintiff-Intervenor will add a Mall service designed especially for the accommodation and convenience of visitors to the Nation's Capital which will stop at various government buildings and monuments located thereon.

7. Defendant's contemplated operation will traverse portions of Plaintiff-Intervenor's existing routes and will substantially duplicate its existing service. The resulting competition will be destructive in nature, depriving Plaintiff-Intervenor of substantial revenues which contribute to the financial soundness of its system-wide operations.

8. Plaintiff-Intervenor is protected against such competition by Article XII, Section 4(g) of the Compact which provides as follows:

... No certificate shall be issued to an applicant proposing to operate over the routes of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission, after hearing upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public convenience and necessity; and provided, further, if the Commission shall be of the opinion that the service rendered by such certificate holder over such route is in any respect inadequate to the requirements of the public convenience and necessity, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate over such route.

9. Plaintiff-Intervenor is further protected against such competition by Section 3 of its Franchise which provides that:

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia (referred to in this part as the "Commission") to the effect that the competitive line is necessary for the convenience of the public.

10. Unless the Defendant is restrained from performing the contemplated transportation, the public will not be afforded the protection required by Article XII, Sections

4(b), 5(d), and 9(a) of the Compact, which deal with the determination of Defendant's "fitness", regulatory control over Defendant's fares, and the provision of liability insurance, and Plaintiff-Intervenor will not be afforded the protection required by the aforementioned provisions of Section 4(g) of the Compact and Section 3 of the Franchise.

WHEREFORE, Plaintiff-Intervenor prays:

1. That this Court permanently enjoin the Defendant and its employees from engaging in transportation subject to the jurisdiction of the Plaintiff unless and until such transportation is authorized by a certificate of public convenience and necessity issued by the Plaintiff;

2. That this Court enter judgment declaring that only such transportation authorized by the Plaintiff may be performed by the Defendant within the District of Columbia; and

3. That this Court require the Defendant to comply with the aforementioned certification requirements of Article XII, Section 4 of the Compact and Section 3 of the Franchise by not performing any passenger transportation for hire by motor vehicle over a regular route within the Mall Area unless and until such transportation is authorized by a certificate of public convenience and necessity issued by the Plaintiff.

/s/ **MANUEL J. DAVIS**
Manuel J. Davis

/s/ **SAMUEL M. LANGERMAN**
Samuel M. Langerman
 3600 M Street, N. W.
 Washington, D. C. 20007
 FE 3-5200
Attorneys for D. C.
Transit System, Inc.

UNITED STATES DEPARTMENT OF THE INTERIOR

NEWS RELEASE

OFFICE OF THE SECRETARY

Kelly—343-4214

For Release March 26, 1967

**CALIFORNIA FIRM SELECTED TO OPERATE
MALL VISITOR SERVICE IN DISTRICT**

Secretary of the Interior Stewart L. Udall today announced that Universal Interpretive Shuttle Corporation, (UISC), of Universal City, California, has been selected to operate the Mall Visitor Interpretive Shuttle Service in the District of Columbia, beginning about May 1. Proposals were received from seven firms.

The one-hour tour, to be conducted on 83-passenger open-air tourmobiles, will travel along the same route followed during the six-week experimental service operated last fall by the National Park Service.

The route will be along the Mall and around the Tidal Basin, with stops at the Washington Monument, Bureau of Engraving and Printing, Jefferson Memorial, Lincoln Memorial, Pan American Building, White House, Smithsonian Institution, The Capitol, National Gallery of Art, Natural History Museum, and the Museum of History and Technology.

Secretary Udall emphasized that the new service is intended to interpret the Mall area for the steadily increasing number of people coming to Washington who are visiting national shrines and areas which are chiefly maintained by the National Park Service. It is not aimed at furnishing a mode of transportation which would compete with entities engaged in the transportation of residents of the Washington area, he stressed.

UISC will begin its service with two vehicles beginning about May 1, and within six months plans to operate four

additional tourmobiles, with a total of approximately 12 to be in operation before the end of the year. The tourmobiles consist of a specially designed articulating unit and a trailer, coupled together to provide passenger access through both units. The tourmobiles will be covered but open-sided. Entry and exit are at both ends.

Service will be offered daily including Sundays and holidays until Labor Day from 9 a.m. to 10 p.m. at 30-minute intervals. From Labor Day through April 15 the hours will be 9:30 a.m. to 5:00 p.m. No service will be offered on Christmas Day.

Fares for the one-hour tour at the beginning of the season will be on a zone basis, with three zones to be established. The charge will be 25¢ per zone, or 75¢ for a round trip. Tickets will be sold at 25¢ each or four for 75¢.

UISC plans to initiate, by November 1 an all-day ticket to sell for \$1 which will permit Mall visitors to board the tourmobile at any stop along the route as many times during the day as desired. All-day tickets for children under 12, will be 75¢. Beginning next summer a non-stop, uninterrupted tour of the Mall will be offered for 75¢, on a year-around basis.

Each tourmobile, in addition to the driver, will have an interpreter pointing out the areas of interest. The contractor will also provide personnel at each stop to answer questions and give information on the service and the City.

UISC, a subsidiary of Universal City Studios, Inc., has been operating tours of Universal City Studios in Los Angeles since 1964. During the initial operation here UISC will use tour trams now in use in California. These will be replaced with tourmobiles designed to meet National Park Service requirements.

Under terms of the 10-year contract, UISC will pay 3% of its gross revenue to the Department of the Interior.

PORTIONS OF THE DEPOSITION OF V. K. STEPHENS

[Dep. Tr. 4]

EXAMINATION BY COUNSEL FOR THE PLAINTIFF-INTERVENOR

By Mr. Redmon:

Q. Will you state your name, sir?

A. V. K. Stephens.

Q. And are you affiliated with Washington Sightseeing Tours, Inc.?

A. Yes.

Q. Tell us what that affiliation is.

A. I am president of the corporation.

Q. And what are your functions as president?

A. Well, I direct the overall operations involving sales operations, promotion, and also coordinate our activities with our parent company, the Greyhound Lines, Inc.

Q. What type of business does Washington—let's refer to it as Washington for the purposes of this deposition—what sort of business do they operate?

A. We operate an interpretive lectured sightseeing tour program originating in the District of Columbia and including Arlington Cemetery and Mt. Vernon.

Q. And are you operating under any certificate of authority issued by the Washington Metropolitan Area Transit Commission?

A. Yes, under certificate number three issued by the Metropolitan [Dep. Tr. 5] Area Transit Commission.

[Dep. Tr. 6]

By Mr. Redmon:

Q. Mr. Stephens, I hand you what's been identified for the record as Washington exhibit number one and ask you, sir, if you would explain what that is and describe it for us.

A. Well, this is our promotional brochure outlining and

describing the various sightseeing tours that are available through our company here in Washington.

Q. These are offered to the public, is that right, sir?

A. Yes.

[Dep. Tr. 7]

Q. In connection with areas of the city such as East and West Potomac Park, the Monument grounds, the Mall area, and the White House, do you conduct sightseeing services in that area?

A. Yes. If you will note in our folder that our entire collection of tours all except one encompass this entire area.

Q. I see. Now, in performing this service, do you drop them off at these particular buildings and pick them up?

A. Each of the tours includes certain features of the area and depending on the type of tour. For instance, on one described here as our tour one, this is the interior public buildings. These buildings are such as the White House, the Capitol, the Smithsonian, Bureau of Engraving, and so on.

And on this type of an operation our lecture includes the description of the buildings, the functions of the department and the points of interest within the building.

Then we permit our guests to leave the motor coach and visit the interior of these buildings.

Now, wherever there is an organized guide service like in the United States Capitol building, we provide that as part of our tour and it's included in [Dep. Tr. 8] the cost of the tour.

Q. Do you have any tour services where you will drive by a building and merely identify it and explain what it is as you go by?

A. Yes, I particularly point out our tour number two which is the City of Washington and Arlington Cemetery.

The main feature of the tour is what we call a lectured riding tour of the City of Washington. And in this tour we cover the entire area as described giving the historical back-

ground of Washington and pointing out the points of interest, the buildings, and the historical significance of the layout of the City, when it was done, how it was developed in its entirety. This is wholly within this area.

Q. I see. I'm going to ask you, sir, with respect to certain points whether you serve them as a part of your tour service. For example, let's start with the Jefferson Memorial.

A. Yes, it's one of the highlights of one of our tour stops.

Q. And the Lincoln Memorial?

A. Lincoln Memorial.

Q. The Washington Monument?

A. Yes.

[Dep. Tr. 9]

Q. The Bureau of Engraving and Printing?

A. Yes.

Q. The White House?

A. Yes.

Q. The Smithsonian Institute?

A. Yes.

Q. The Capitol?

A. Yes.

Q. The Library of Congress?

A. Yes.

Q. The Supreme Court?

A. Yes.

Q. Can you estimate, Mr. Stephens, what percent of your business in terms of gross or the number of people you carry are directly involved with these points that I have just mentioned to you?

A. Well, as I have explained, all of our tours except one make full use of this area just described and I would say that this one tour in passenger count and revenue would only represent approximately two to three percent of our business.

[Dep. Tr. 11]

By Mr. Redmon:

Q. Mr. Stephens, how did this prospectus come into your possession?

A. It was mailed to me by the Park Service.

Q. And just generally what was that prospectus intended to cover?

A. The prospectus outlined a service that the National Park Service wanted and described the area, described the idea, and invited me to make an offer for our company on this service.

Q. Now, in connection with that prospectus, did there come a time when you had a conference with Mr. Sutton Jett?

A. Yes. In fact we had two conferences with him after we received the prospectus.

• • •

[Dep. Tr. 12]

Q. Now, in connection with the equipment and the regulation of the safety factors and so forth, did Mr. Jett indicate to you any requirement that you had to comply with the District safety requirements?

A. Yes, it was emphasized—in fact, not only in the prospectus but in our conferences—that any equipment we proposed would have to be acceptable or meet the standards of the ICC and the District of D. C., the District of Columbia.

Q. Where was that equipment to be licensed?

A. In the District of Columbia.

Q. By the District?

A. By the District to meet all of their standards and requirements. In fact Mr. Jett stated that they would be co-operative as much as they could in assisting us in trying to get some unusual piece of equipment through inspection.

He illustrated in the last conference that we had that one company had proposed a piece of equipment that the Dis-

trict of Columbia would not license and therefore they were unable to approve of that equipment for this program.

[Dep. Tr. 13]

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

By Mr. Cunningham:

Q. Relating, Mr. Stephens, to your testimony of operations in the Mall area, would you be so kind as to describe the streets by name that you travel over in the course of these tours?

A. Yes, we make full use of Third Street, First Street which is the west side of the Capitol building, and we travel inside the Mall. I'm not maybe too good on the names of the streets inside the Mall, but I believe it's Adams Place.

Mr. Meehan: Look at the map.

The Witness: Yes. Pardon me. Yes. We use Washington Drive, Madison Drive, Ninth Street, Constitution Avenue, Fifteenth Street.

Then we use the Ellipse past the White House and then back to Constitution Avenue, Seventeenth Street, around the Tidal Basin to the Jefferson Memorial and including the Bureau of Engraving.

And then we use West Potomac Park around the Lincoln Memorial. And this is the only route in which these particular attractions can be seen.

By Mr. Cunningham:

Q. Do your vehicles in the course of these tours travel over Fourteenth Street?

Q. Yes; Ninth Street and Third Street.

[Dep. Tr. 14]

Q. In addition to the other streets you have named?

A. Yes.

Q. Are there other vehicles occupying these streets that

you have just described at the same time or during the same period of day that your tours are operating?

A. Yes. In other words, they are public streets being used by all bus companies.

Q. Are there other commercial vehicles operating on these streets you have just named at the same time your vehicles are?

A. Yes.

Q. Are there private vehicles to the best of your knowledge operating on these streets at the time your vehicles are?

A. They are.

Q. Turning to the vehicles that perform this tour service you have described, are these vehicles owned by your company?

A. Yes.

Q. Do you operate any leased vehicles?

A. Only when the traffic demand is so great that our present equipment won't accommodate it, we lease them from other companies.

[Dep. Tr. 15]

Q. When those vehicles are leased, are they marked and identified as being under the control of the Washington Sightseeing Company?

A. Yes.

Q. All right. Are the people who drive these vehicles employees of the Washington Sightseeing Company?

A. Yes.

Q. Do these employees that drive the vehicles collect fares from people getting on your vehicles?

A. They collect tickets and sell tickets.

Q. They also sell tickets?

A. Yes.

Q. Do they sell tickets to people en route or in the course of the tour?

A. In the course of the tour and en route.

Mr. Cunningham: No further questions.

EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Meehan:

[Dep. Tr. 17]

Q. The lectures on the tours that—do all the tours have lectures?

A. Yes.

Q. Are all the lectures live?

A. Live. Right.

[Dep. Tr. 18]

Q. Are the lectures given by the driver?

A. Yes, we refer to our driver as tour director. He drives the bus and gives the lecture.

Q. Is there anyone else on the bus employed by you other than the driver?

A. No.

Q. Do you have a permit from the Director of the National Park Service to operate your buses over the Mall?

A. It's not required.

Q. Do you have one though?

A. No.

Q. Do you have any bus stations or bus stops of your own on the Mall area, any signs on the Mall from your company? A. No, we do not. We stop at designated places provided by the Park Service for our equipment.

Q. Is that provided generally for bus equipment? A. It's for all buses.

[Dep. Tr. 38]

FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF

By Mr. Cunningham:

Q. Mr. Stephens, assuming that your company had been recipient of your bid to this prospectus and had actually begun performing the terms of the contract, in your

opinion would this sort of transportation service have been rendered by the Washington Sightseeing Company or by the National Park Service?

Mr. McKevitt: I object to that as calling for a legal conclusion beyond the competence of this witness.

Mr. Cunningham: All right. Your objection is noted.

The Witness: Do I answer? This would have been operated by Washington Sightseeing Tours.

By Mr. Cunningham:

Q. Washington Sightseeing Company would have been the person engaged in performing the transportation?

A. Yes.

Mr. Meehan: I would like to interject an objection.

Mr. Cunningham: That's all.

FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Meehan:

Q. Would you have felt it necessary to seek a [Dep. Tr. 39] new certificate of public convenience and necessity to operate the service that you bid for under the prospectus?

Mr. Redmon: I'm going to object to that question, too, because I have already pointed out whether or not the certificate of authority was good enough or whether another certificate would be required would be up to the Transit Commission.

Mr. Meehan: Again, I say this goes with our battle with D. C. Transit whether or not this is a given route, fixed schedule, whether he would have felt that his irregular route certificate would have been sufficient for him to operate under as regards authority from the Washington Metropolitan Area Transit Commission.

Mr. Redmon: I'll object to the question and let him answer it.

By Mr. Meehan:

Q. Did you ever make a judgment? A. It was our opinion that we had the authority; however, if it was felt and determined that we needed additional authority, we would have gone to the Transit Commission for the authority.

Mr. Meehan: That's all.

Mr. McKevitt: Nothing more.

Mr. Cunningham: One more.

[Dep. Tr. 40]

By Mr. Cunningham:

Q. In response to your answer to that question, Mr. Stephens, I take it there was no question in your company's mind that authority—operating authority in the form of a certificate to public convenience and necessity from the Washington Metropolitan Area Transit Commission was a condition precedent to your running this service?

Mr. McKevitt: I object to the form of that question, "in your company's mind," and I object to it as calling for a legal conclusion.

Mr. Cunningham: I'll strike "in your company's mind" and say "in your own personal mind."

The Witness: Yes.

VI

A. Portions of Trial Testimony of William E. Bell

[Tr. 49]*

By Mr. Ralph Cunningham:

Q. Now, sir, you are familiar with the exhibit No. 2 attached to your affidavit of April 17th, 1967? A. Yes, I am. That is a map of the downtown section showing all of the routes the D. C. Transit operates in that area, including the Mall area which is shown on the bottom of the map.

* All transcript references are to the transcript of the hearing held on April 26, 1967.

Q. And it would be your testimony that this map accurately reflects the current routes of the D. C. Transit [Tr. 50] System in the downtown Washington area? A. With one exception: On this map, in the lower right-hand corner, just to the left of where it says "U. S. Capitol," you will notice that we have a number of routes shown on this map operating on Second Street between Pennsylvania Avenue and Independence Avenue. At the present time, this is our regular route; however, due to construction in the area, we are on detours and all of the routes that are shown operating on Second Street presently are operating on Third Street. Second Street is closed and I understand will be closed for a year, maybe two years.

. . .

[Tr. 53]

By Mr. McKevitt:

Q. Mr. Bell, on page 4 of your affidavit dated April 17th, 1967, you state that D. C. Transit provides bus service to the State and Defense Departments of the Government of the United States. "These contracts are accepted"—and so forth.

Now, do you have a contract with any of the Government offices? [Tr. 53] A. We have a contract with the Military District of Washington, the TPRNC which is the Potomac River Naval Command. We have contracts with the State Department.

[Tr. 54] Q. Where do those buses run? Take the first one you mentioned. A. The Military District of Washington runs between many of the Government installations and they go to such places as the Naval Air Station, Bolling Air Field. They run to some of the temporary buildings up on Nebraska Avenue. I think it is Tempo No. 8; I'm not positive.

Q. Let me put it this way: Do they all run out into Virginia and some out into Prince George's County and

outside of the District of Columbia? A. Not all of them, but some do.

Q. Most of them do? A. Not most of them; no, sir.

Q. Let's get one that runs only in the District of Columbia. A. We have got one that runs from the Navy Department and it runs over to the Navy Yard which is located around 11th and M, Southeast and on over to the Naval Air Station.

We have another with the State Department that runs from the main State up to 1901 Pennsylvania Avenue and—I forget the number, it's just across the street of the building on the other side of 19th and Pennsylvania Avenue.

[Tr. 56] A. We advertise the time of day we will leave and we advertise the buildings that we will go to. There are occasions when some of the buildings aren't open at the time the tour leaves and they will go a different route, but the majority of the trips do follow the routes as I have outlined in the exhibit No. 4—

[Tr. 56] Q. But they aren't on a given route in the sense that your regular buses are, routes established, say, by the Commission? A. These routes are not established, no, sir.

Q. In other words, the sightseeing routes are not on an established or fixed route in the sense that your other bus lines are? A. To a degree, I would say the majority of them are on fixed routes, yes. They have to be on fixed routes in order to be on the proper side of the street when they go past these buildings.

Q. But you are not required to be on fixed routes by the plaintiff in this case, namely, the Washington Metropolitan Area Transit Commission? A. No, sir.

Q. And you are not required to be on fixed routes as far as your sightseeing is concerned? A. No, sir. We follow a tariff and tell them what our price is under the tariff and what our operations will consist of, where the people will be taken to; but we do not spell it out street by street.

Q. But you are required to be on a fixed schedule or given routes as far as your regular commuter bus service is concerned? **A.** Yes, we are subject to providing adequate service at all times. Whether it runs at one minute after nine or two minutes after nine, we have our own discretion on that; but we file frequencies of service, we file the streets over which we operate and we file the fares that go with those routes.

[Tr. 56]

Redirect Examination

By Mr. Davis:

Q. Mr. Bell, what types of service, if any, does D. C. Transit operate over Adams, Jefferson and the other streets named by counsel for defendants in the Mall area? [Tr. 58] **A.** Charter and sightseeing.

Q. How extensive is that service, sir, if you know? **A.** Well, D. C. Transit in its group sightseeing does approximately \$1 million worth of business a year and of that amount, about \$750,000 or three-fourths of it are for people who wish to be taken into and visit and be told about the buildings and points of interest in the Mall area.

In addition to that, D. C. Transit does approximately \$380,000 worth of business in the individual sightseeing tours. These are people who come into 1422 New York Avenue and purchase tickets to take these tours.

[Tr. 59] We have 10 such tours and only two of them do not go into the Mall area. In my affidavits, I showed on Exhibit No. 4, Tour No. 1; on Exhibit No. 5, Tour No. 2; on Exhibit No. 6, Tour No. 3; and on Exhibit No. 7, Tour No. 8. All of those exhibits show that the majority of those routes do go into the Mall area.

Now, I didn't show a map of Tour No. 4 because that is a combination of Tours No. 1 and 2; and so, if you look at

the Exhibits No. 4 and No. 5, then you can see how much our Tour No. 4 goes into the Mall area.

I didn't show a map of our Tour—

The Court: Excuse me. Isn't this why we put the affidavit in, this morning, so we wouldn't have to repeat all of this, Mr. Davis? The affidavit is in evidence.

Mr. Davis: The affidavit is in, yes. All I wanted was for this witness to give the type of service.

The Court: He is just repeating his affidavit.

By Mr. Davis:

Q. You say you are not? [Tr. 59] A. Of the first affidavit, yes, there is quite a bit of repetition.

Q. Do you have any information further than that which you have given us which would be new to the Court or not [Tr. 60] included in the affidavits in response to this question? A. Yes. Of the 10 tours that we operate, only two do not go into the Mall area and they comprise only approximately \$5,000 annually of the \$380,000—plus, that are taken in on these individual tours; so that the majority or 98.7 per cent, I believe it is, of the individual tour business does go into the Mall.

Q. Now, with respect to the Government contracts about which you were asked certain questions by counsel, would you explain to the court the circumstances and conditions under which a proposal is made and a contract issued, giving due consideration to the rights of the company to operate such a contract? A. The normal procedure is that a bid will be sent to the company, that is, a proposal to bid will be sent to the company and listing the date and time on which the company's bid must be in. In the bidding and also in their description of the requirements for bidding are listed certain things, such as, a company must have all of the necessary authorities from all of the areas in which it is going to operate this service in order to even bid on it. It lists such things as discrimination, that there shall be no discrimination in the hiring of employees. It also

lists [Tr. 61] the type of equipment that must be supplied, and things of that nature.

One of the main things is that in order to bid, you must have all of the necessary qualifications from the regulatory authorities; you must have your operating rights.

[Tr. 61] Q. Do these bids require that the company fix routes and schedules? A. Yes, sir.

Q. Are you caused to comply with those requests in providing such services? A. Yes, we are.

Q. In all contracts on which you offer or tender a bid, does the company hold the requisite transit authority from the WMATC? A. That is correct. In some instances, we must enter into a contract with other operating companies, because neither one holds the entire operating authority and we enter into contracts and we use part of their authority and they use part of our authority. One is a prime contractor and the other is a sub-contractor; and that is how we operate and get the service performed.

Q. Do I understand your testimony is that is a prerequisite to your tender of bids on these contracts? [Tr. 62] A. Yes, sir.

Mr. Davis: I have no further questions.

Mr. Russell Cunningham: I have no questions.

Mr. Edmon: I have none, Your Honor.

Recross-Examination

By Mr. McKevitt:

Q. On these operations where you have a contract with the State or Defense Departments, who are you moving in your buses? A. Employees. They are identified as employees. In many instances they will issue an identifying card.

[Tr. 62] Q. Now, do you get a separate certificate from the WMATC for each one of these? A. All of these contracts are on file with the Washington Metropolitan Area Transit Commission.

Q. I understand they are on file. I asked you: Do you get a special certificate for each one of these? A. Not a special certificate, no sir. Certificates are only issued when the service is operating outside the District of Columbia and it spells out all of the names of the streets. In the District of Columbia, through the authorizations that we have, we have route authorizations for all of the routes.

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B. Portions of Trial Testimony of George B. Hartzog, Jr.

[Tr. 73] Whereupon

George B. Hartzog, Jr.

called as a witness on behalf of the defense, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McKevitt:

Q. Your name, please? A. George B. Hartzog, Jr.

Q. What is your official position? A. I am Director of the National Park Service.

Q. How long have you held that position? A. Since January 6, 1954.

Q. Is the National Capitol Region an area under your jurisdiction? A. It is, sir.

• • •

[Tr. 75]

By Mr. McKevitt:

Q. Does your Department, the National Park Service administer the so-called Mall area? [Tr. 76] A. Yes, sir.

Q. Can you tell us just briefly some of the things you do in connection with administering it? A. We maintain it in terms of its physical appearance. We police the traffic on it. We provide the visitors with interpretive services, protection services. We have property protection, the Capitol Park Police.

[Tr. 76] Q. Is it one of the so-called park areas in the District of Columbia? A. Yes, it is.

[Tr. 76] Q. Mr. Hartzog, would you tell us what you consider your responsibilities are to the Mall area? A. We consider it to be to protect, preserve and interpret this great parkland of the nation's capitol, which the Mall is, connecting as it does the three main branches of Government and great historical memorials of the founders of our nation.

Q. Have you had any indication of the number of people who are interested in visiting the Mall every year? A. Yes, sir.

[Tr. 77] It numbers in the millions. We have had a number of surveys. The figures vary from several million up to about 15½ million. I have some charts here, if you would like to see them, indicating the results of the studies.

Q. Has that number been increasing? A. Yes, sir, it has.

Q. Did you have any special problems with respect to taking care of the visitors in the Mall? A. It constantly gets more complex, of course, because of the capacity of the memorials themselves have, a limited capacity for handling people, so there is a great need now to do interpretation outside of the memorials themselves and the only place that this likely can be done, in our view, is on Mall in the vicinity of these great memorials.

[Tr. 77] Q. Have you had some interpretive service there previously? A. Yes, sir, we have.

Q. Did you figure it was sufficient in your estimation? A. No, sir, we do not.

Q. What steps did you take, then, in connection with improving the interpretive service to visitors to the Mall? A. Sir, we have tried a number of things. The most [Tr. 78] recent thing that we have tried was as a result of a survey that was made for us by the Vice President of Vista Services, Colonial Williamsburg suggesting the

installation of visitor's kiosks and perhaps some kind of interpretive shuttle service around the Mall. So that last fall, we conducted an experiment with a visitor shuttle service. We found that it worked very well and the result of this, we issued a prospectus inviting private enterprise to provide this service if we could find a suitable applicant; and we did find a suitable applicant. And we have entered into a contract with them.

Q. Does this service contemplate an operation wholly within the confines of the National Park area, the Mall area? A. It does; not entirely within the Mall, but within the National Park area. The Mall, the Ellipse and Jefferson Memorial.

Q. In other words, this service will be carried on entirely on land owned by the United States? A. Yes, sir.

Q. And were those services described in the prospectus? A. Yes, sir.

Q. And you called for bids? [Tr. 78] A. No, sir; we called for proposals. Under the [Tr. 79] statutory authority granted the Secretary of the Interior; which has been delegated to me, we do not have to let these services pursuant to competitive bidding. We do solicit proposals and on the basis of our evaluation of those proposals we negotiate with the applicant who in our opinion can render the best service in the public interest.

Q. How many applicants did you have, if you recall? A. Seven.

Q. Can you name them? A. Well, I have them—the D. C. Transit; the White House Tours; Universal Interpretive Shuttle Corporation; Mr. Nilon; Washington Tours. There were several.

Q. And the Zoo Tours? A. Yes.

Q. That is sufficient.

Are there any long-range plans for the Mall?

By Mr. McKevitt:

Q. Do you have any long-range plans for the Mall? A. Yes, sir, we do.

Q. Would you describe them to us briefly? [Tr. 80] A. Generally, what we propose to do is to make it a memorial Mall and limit the amount of vehicular access to it to a visitor shuttle service, with parking provided underground for both automobiles and buses and for visitor centers in connection with these parking areas at the Ellipse and under the Mall and to try to tie together an operation that will separate the visitors to Washington from his automobile.

[Tr. 80] Q. Do you have any parking problems on the Mall? A. They are very great, yes, sir.

Q. You ultimately accepted one of these bids? A. We did, sir.

Q. And from whom? A. The proposal of Universal Interpretive Shuttle, sir.

Q. Did you talk to the others before you did that? A. We talked to all of them except Mr. Nilon who did not respond to the invitation to discuss his proposal.

Q. Now, is the contract service that you have, do you consider it to be supplemental to the present sightseeing service in the area? A. We do.

[Tr. 81]

By Mr. McKevitt:

Q. Are you familiar with the general sightseeing service to the Mall at the present time? A. I am, sir.

Q. Can you just describe briefly what that consists of? A. Well, it consists of tours that are chartered that come into the city. I met with a number of these operators at the time that this proposal was under consideration prior to issuing the prospectus to see just how an interpretive

service would fit together with what was already being provided by others in the area. This was also a part of the consideration of Mr. McCaskey who considered this problem for us. It consists of tours that are sold to visitors by companies in Washington, visiting specific memorials and it consists also of guide service provided by taxicab operators in the area.

[Tr. 82]

By Mr. McKevitt:

Q. I hand you defendant's Exhibit 4 which is a copy of the contract which has been signed by the Universal Interpretive Service and has, I believe, been sent to Congress. A. Yes, sir.

Q. Without going into great detail, can you tell us to what way you exert control over this operation in that contract? A. This contract not only gives us authority to control the rates for which the service is provided, but also the standard of performance by the concession, the hours which it will be operated and the areas that will be covered in it.

Q. Are these matters which you consider vital which you retained control over? A. Yes, sir, indeed they are.

[Tr. 83] Q. Would you explain why? A. Well, of course, the hours in which you provide the service is directly related to the time when the people are in an area and when the facilities are available for interpretation.

The kind of equipment, as we found during this experiment, is an essential part of the whole inspirational experience of visiting the Mall.

We believe that the rates are an extremely important part of this, because we want the visitor to the Nation's Capitol to have an opportunity to see the parkland of his Nation's Capitol at a reasonable price and still a rate that will provide an adequate return to private enterprise.

These are basic considerations in all concessions operations and that these are the same criteria that we use in any other national park. Concessions are there to serve the public and not simply to make money for private enterprise.

[Tr. 84]

By Mr. McKevitt:

Q. In awarding the contract to Universal, did you conclude that it met all the particular qualifications? A. We did, sir.

Q. Did you evaluate the effect of this proposed new service on the existing charter and sightseeing service? A. We did, and we felt that this was in addition to what was being done, because this was an interpretive service provided by the Department and by the Service to interpret the significant features that are pertinent to the Mall area and the great parkland of the Nation's Capitol and not simply to give visitors a sightseeing tour of Washington.

Q. Do you feel it will have any particular effect on existing sightseeing services? A. I do not, sir. In other words, our plans are not to interfere with the sightseeing bus operations that go through the Mall. We have permitted these to go on by [Tr. 85] sufferance for many years and until such time as we implement the overall concept of the Mall plan and eliminate the vehicular traffic from it, providing other places for them to park, we contemplate that they will continue to take their passengers there.

Q. In other words, you have issued these sightseeing companies no particular permits, but you have allowed them to use the roads by sufferance; is that correct? A. That is right, sir.

Mr. McKevitt: That is all, Your Honor.

[Tr. 85]

Cross-Examination

By Mr. Russell Cunningham :

Q. Mr. Hartzog, do I gather correctly from your direct testimony that the service that Universal is going to provide is a different type of transportation service than is now being rendered by other companies in the area? A. I believe so; yes, sir.

Q. In sending an invitation to bid, were you primarily concerned with an organization that could furnish this different and this distinctive type of transportation? Is this the prime quality that you were looking for when you issued these invitations to bid? A. No, the prime quality that we were looking for was [Tr. 86] an end product of the kind of service we were seeking, which is a service different from that which is now being provided. We want a service like the one we experimented with last fall. We weren't seeking any particular company and, certainly, no preconceived notion as to what type of equipment and this kind of thing; what we were after was an end product of an interpretive service.

Q. In fact, you were looking for a new method of transporting people around the Mall, is that right? A. No, I was looking for a new method of interpreting the Mall to the people who were there.

Q. What type of people did you think you would find that you could send out these invitations to bid that would be particularly qualified to provide such a service? [Tr. 86] A. Well, we have a list of people who are interested in concessions throughout the National Park System and we circularize that list. In addition to that, we have a particular requirement such as this for medical service, for example, and we believe there are people who might be qualified even though they haven't made a specific request and we usually mail a prospectus as well.

Q. Do you know how many companies of the—how many copies of the prospectus you mailed out? [Tr. 87] A. I do not; no, sir.

Q. Do you know whether it exceeded 50? A. I do not know, sir.

Q. You have no idea, so, it could have been anywhere from the seven that replied to 200? A. That's correct, sir.

Q. Yet, you say you do know there is a list, but you have no knowledge of how long a list it is? A. There are several hundred on this list, but I don't know whether they mailed it to the entire list, or whether they mailed it to people who had expressed an interest in this type of service.

Q. Did you get a reply from any company or person who is not primarily engaged in the transportation of passengers for hire? A. In the context of franchised operators, yes. I think this Universal Shuttle is not engaged in the operation of transportation for hire and I believe that Mr. Nilon also ran a comparable kind of operation. In other words, not a general transportation operation.

[Tr. 87] Q. Did Universal, in submitting its bid, point out to you one of their principal features was the fact that they had run a transportation system on the picture lots out in [Tr. 88] California? A. Yes, sir.

Q. So, they did emphasize to you that they were experienced in transportation, in moving people around? A. Yes, and in the interpretive—

Q. Is that right, sir? A. And in the interpretive end of transportation.

Q. I didn't ask you about interpreting, sir. Just answer my question. A. The thing they stressed most and what impressed me most in their proposal was their interpretive qualifications.

Mr. Davis: I have a few questions, if I may, sir.

By Mr. Davis:

Q. Mr. Hartzog, I believe you were testifying generally as to the type of services that the Director of National

Parks renders in the Mall area, and I believe you mentioned [Tr. 89] the fact that presently you police the area with your own police force? A. Yes, sir.

Q. And you maintain the roads and part of the Mall area? A. Yes, sir.

[Tr. 92]

By Mr. Davis:

Q. Are you familiar with the routes over which the proposed service will operate? A. Yes, sir.

Q. Are you familiar with the fact that the proposed routes will cause the defendant in this proceeding to operate these particular vehicles over streets that are under the jurisdiction of the District of Columbia?

The Court: If you know. If you know where the jurisdiction ends or begins. This is calling for legal conclusions, too, Mr. Davis.

If you know all these questions of jurisdiction, you can make a guess at it; but I don't think you are in a position to give a legal opinion.

The Witness: I am advised they are our streets.

[Tr. 93]

By Mr. Davis:

Q. Under the jurisdiction of the District of Columbia over which your service will travel? A. Under the jurisdiction of the National Park Service.

Q. I appreciate that, sir. But are there also streets within the jurisdiction of the District of Columbia over which your service would operate? A. There are some streets in the Mall area that are administered by the District of Columbia which these vehicles will cross. They do not operate along the streets, they simply cross them.

[Tr. 94]

By Mr. Davis:

Q. Mr. Hartzog, I believe you did testify that you are familiar with [Tr. 94] Second Street and Third Street and the fact that they are temporarily closed at Third Street.

A. Yes, sir.

Q. For how long a period of time will that be closed, if you know? A. I don't know. It is involved in construction of some time.

Q. Is it your best estimate that it will be approximately a year or two? A. I wouldn't know.

[Tr. 95] Q. Now, during the period of time that that street is closed, where do you propose to operate this particular service? A. Well, there is to be access provided by the District of Columbia for us there and this is a part of the whole agreement between this service and the District of Columbia and the Highway Department. We are giving them certain permits, they are giving us certain permits for use of that property, because part of that property they are going to put that property on is managed by the National Park Service. Part of it is in the jurisdiction of the Architect of the Capitol. So that this is quite an involved matter and I, frankly, am unable to answer the details of your question.

C. Portions of Trial Testimony of Robert M. Landau

[Tr. 104] Whereupon,

Robert M. Landau

called as a witness on behalf of the defense, having been first duly sworn, was examined and testified as follows:

. . .

Direct Examination

By Mr. McKevitt:

Q. State your name, please? A. Robert M. Landau.

Q. And where are you employed, Mr. Landau? A. I am employed by the Department of Interior as attorney-advisor in the Office of the Solicitor.

[Tr. 105] Q. What is your particular relationship to the National Park Service? A. I am in the Division of Parks and Outdoor Recreation, and our function is to advise both of those bureaus, the National Park Service and the Bureau of Outdoor Recreation in regard to their programs.

Q. What is your relationship to the National Capitol Parks? A. National Capitol Parks are part of the National Capitol Regions of the National Park Service. As far as my relationship is concerned, approximately 60 per cent of my total work is concerned with National Capitol Regions.

Q. Are you familiar with the regulations and the administration of the so-called Mall area? A. Generally, yes, sir.

Q. Do you know whether any permits are issued by the Department of Interior for sightseeing service on the Mall? [Tr. 105] A. Based on the investigation that I have conducted, I have been unable to determine that any permits are issued for sightseeing service.

Q. Can you describe on what basis the sightseeing buses are on the Mall as far as the Department of Interior [Tr. 106] is concerned? A. These sightseeing buses are and have been permitted on the Mall roads on a sufferance basis and

parking areas are designated for their use, and that is essentially it.

Q. When I say "existing sightseeing service," I mean any other than that contemplated by the contract involved in this litigation. Now, will you describe the type of present sightseeing service with respect to where the customers come from and as to whether or not there is any solicitation on the Mall? A. Basically, to the best of our information these are package tours which are sold outside of the Mall and the buses will enter the Mall, discharge their group at a particular building and park. The same group will come back to the bus and transported to a different area. The regulations of the Park Service prohibit commercial solicitation in National Capitol Parks area.

Q. Is it contemplated that this new service will have any particular effect on the operation and revenue of the present sightseeing companies in existence?

Mr. Russell Cunningham: Objection, Your Honor. [Tr. 107] He is asking for a conclusion.

The Court: He is just asking for a contemplation; it is not a conclusion.

[Tr. 107] The Witness: Shall I answer, Your Honor?

The Court: Yes, go ahead.

The Witness: It is the intention of the Park Service that the present operations of the sightseeing companies will continue since the service offered by the interpretive shuttle is not duplicative of their services and, basically, there is no intention to exclude these sightseeing buses from the Mall and provision will be made for additional parking for them after the interpretive shuttle service is initiated.

By Mr. McKeyitt:

Q. Where will this service be conducted? Will the proposed new service be conducted entirely within the confines of the park area? A. That is correct.

Q. Do you know whether there are any particular plans with respect to the future parking areas on the Mall? A.

Well, from discussions that I have had and from questions that have come to me as part of my job, the plans for the Mall are basically to remove all vehicular traffic. Present roads will be replaced by walkways. There will be [Tr. 108] a paved ribbon for the interpretive shuttle. Of course, this will result, at some time in the future—I can't say exactly when it will be—this will result in elimination of all vehicular traffic on the Mall but this, to a great extent, is conditioned upon providing some other parking for private vehicles and for tour and sightseeing buses.

The immediate effect of the interpretive shuttle will be minimal as far as bus parking on the Mall is concerned as far as any adverse effect will be concerned. One possibility involves the elimination of all vehicular parking from the south side of Jefferson Drive and the north side of Madison Drive, I believe.

[Tr. 108] Q. If that were done, would they be replaced?

A. Yes. There are approximately 15 bus parking spaces on those sides and if those bus parking spaces are eliminated, it is the plan of the Park Service to reserve the south side of Adams Drive from 9th to 14th Streets for bus parking and that would result in 60 to 70 bus parking spaces to replace the 15 which would be removed.

Q. You are familiar with the contract entered into between the United States and the defendant, Universal Interpretive Shuttle Corporation? [Tr. 109] A. Yes, sir.

Q. And under that contract, the routing of the buses will be controlled by the National Park Service? A. Yes, sir, completely.

Q. Does this mean that rather than going down Constitution, the route would be changed somewhere? A. There are several possibilities which have been considered. No definite route has been decided upon. There have been several considered based upon the experiment which was run last fall. Alternatives are being considered. For example, possibly putting a ramp at the Lincoln Circle to have the shuttle come down North Reflecting Pool Drive.

Another possibility would be to have it go around the Lincoln Memorial and come down South Reflecting Pool Drive to 17th Street on the Mall.

Mr. McKevitt: That's all, Mr. Landau.

Mr. Russell Cunningham: No questions, Your Honor.

Cross-Examination

By Mr. Davis:

Q. Mr. Landau, would you tell me, please, what regulation you referred to when you say the regulations would prohibit solicitation for service for hire on the Mall? [Tr. 110]

A. If my memory serves me, it's 50.25.

Q. Rather than repeat a lot of questions with respect to the service being in the confines of the Park area, you are also familiar, are you not, with the fact that the service will cross streets which are under the jurisdiction of the District of Columbia? A. It will cross streets under the jurisdiction of the District of Columbia; yes, sir.

A.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

Affidavit in Support of Motion for Preliminary Injunction

George A. Avery, being duly sworn, deposes and says:

1. He is a member Commissioner of the plaintiff in the above-styled action.

2. This is an action for Injunctive Relief.

3. Universal Interpretive Shuttle Corporation is a California corporation. It has publicly announced that it intends to do business in the District of Columbia, beginning on or about May 1, 1967. It has informed the plaintiff that Harry M. Plotkin and Ralph S. Cunningham, attorneys at law, 1815 H Street, N. W., Washington, D. C., have been appointed as special agents to accept service of process issued by the United States District Court for the District of Columbia on behalf of the Washington Metropolitan Area Transit Commission.

4. Universal Interpretive Shuttle Corporation has agreed with the Department of Interior of the United States of America to engage in and perform certain transportation of persons for hire between points within the Metropolitan District, as is defined in Article I of the Washington Metropolitan Area Transit Regulation Compact, ("Compact") 74 Stat. 1031, D. C. Code § 1-1410 (1961 Ed.).

As publicly stated, a tour will be operated on public streets over a route along the "Mall" area of the District of Columbia, with stops at various government buildings and monuments. The transportation will be performed in Universal Interpretive Shuttle Corporation vehicles, which will be operated by the corporation's employees. Pas-

sengers will pay the corporation a pre-established fare or charge.

5. Article XII, Section 1(a) of the Compact (74 Stat. 1035) confers jurisdiction upon the Washington Metropolitan Area Transit Commission ("Commission") to regulate the transportation of persons for hire between points within the District of Columbia. Article XII, Section 4(a) of the Compact prohibits transportation subject to that law unless the Commission has issued a certificate of public convenience and necessity authorizing such transportation.

6. The Commission has informed Universal Interpretive Shuttle Corporation, by registered letter dated March 27, 1967, of the provisions of the Compact. Universal Interpretive Shuttle Corporation has advised the Commission, by letter dated March 30, 1967, that it does not intend to apply for a certificate of public convenience and necessity.

7. It appears to the Commission that Universal Interpretive Shuttle Corporation is about to engage in acts which will constitute violations of the provisions of the Compact, which acts will consist of engaging in the transportation of persons for hire between two or more points within the District of Columbia, without having been issued the certificate of public convenience and necessity authorizing such transportation required by Section 4(a), Article XII, of said Compact, without having filed and secured the approval of tariffs reflecting the fares or charges to be imposed upon the persons to be transported, required by Section 5(d), Article XII, of said Compact, and without having complied with the insurance requirements prescribed by the Commission in its Regulations 62-01 et sequence, adopted October 31, 1966, pursuant to Section 9(a), Article XII, of said Compact.

8. Unless the Universal Interpretive Shuttle Corporation, and its employees, are enjoined and restrained during

the pendency of this action from the Commission of the acts threatened by it, the public safety and convenience is endangered and the public is faced with great and irreparable injury and damage. Unless and until the Commission finds that the Universal Interpretive Shuttle Corporation is "fit, willing, and able" to perform the transportation threatened, failure to enjoin and restrain the operations will foist upon an unsuspecting public a service vested with the "public interest" and stated by the legislative bodies of the United States of America, the State of Maryland, and the Commonwealth of Virginia to be prohibited without the sanction and approval of their delegated agency, the Washington Metropolitan Area Transit Commission. Concomitantly, the riding public will have been denied that protection against unsafe operations, unfair, unreasonable and unregulated fares and charges, and the financial responsibility for bodily injury, death, or for loss or damage to property declared by the said legislatures to be a condition precedent to the transportation of passengers for hire within the Washington Metropolitan Area.

/s/ GEORGE A. AVERY
 George A. Avery, Commissioner
 Washington Metropolitan Area
 Transit Commission
 1815 North Fort Myer Drive
 Arlington, Virginia 22209

[Jurat omitted in printing]

B.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

Affidavit in Support of Plaintiff's Reply

George A. Avery, first having been duly sworn, deposes and says: I am the same George A. Avery whose Affidavit in support of the plaintiff's motion for preliminary injunction was filed with said motion on March 31, 1967.

On or about February 15, 1967, the Commission received a copy of a Prospectus issued by the National Park Service, inviting the submission of bids by interested persons to perform a transportation service and additional allied functions of non-transportation nature. The Prospectus made no mention of the Compact, its provisions, and the regulatory responsibilities created in this Commission thereunder. Accordingly, the Commission directed its General Counsel to discuss this matter with appropriate employees of the National Park Service. Such a meeting was held on February 17, 1967. Subsequently, the Commission was orally informed that the Prospectus would not be amended because the Secretary of the Interior and the National Park Service were of the opinion that such transportation was under the exclusive jurisdiction of the Secretary.

Subsequently, two representatives of the Commission, Commissioner George A. Avery and General Counsel Russell W. Cunningham met with officials of the Department of Interior and the National Park Service. At this meeting, both groups continued to express the belief that their respective positions were legally correct. The Commission was assured, however, that all persons submitting bids in response to the Prospectus would be informed of the pro-

visions of the Compact and the Commission's interpretation thereof in regard to the proposed transportation.

The official records of this Commission reveal that 16 certificates of public convenience and necessity have been issued to date, authorizing in varying degrees, regular route, charter, and sightseeing operations. At least 8 of these specifically authorize sightseeing or pleasure tours within the District of Columbia, including the Mall area. The official records of this Commission further reveal that many of these carriers provide so-called "interpretive" services, wherein special guides discourse and lecture on the historical and present significance of the national monuments and shrines located in the District of Columbia, including the Mall area. The official records of the Commission further indicate that many of these carriers provide special tours of Government buildings, solely for the purpose of viewing the national monuments, shrines and buildings. The guides are licensed and regulated by the District of Columbia. Prior to the issuance of a guide license, an individual must display a thorough knowledge of the history and significance of the national monuments, shrines and buildings located in and about the District of Columbia, including those located in the Mall area.

/s/ GEORGE A. AVERY
George A. Avery, Commissioner
Washington Metropolitan Area
Transit Commission
1815 North Fort Myer Drive
Arlington, Virginia 22209

[Jurat omitted in printing]

C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

William H. McGilvery, first having been duly sworn, deposes and says as follows: I am the Chief Clerk of the Washington Metropolitan Area Transit Commission and my duties number, among other things, the custodian of the official records of said Commission.

The plaintiff is an interstate Compact Agency established to regulate transportation of persons for hire and, in furtherance thereof, has issued various certificates of public convenience and necessity. A certificate of public convenience and necessity sets forth the transportation a particular carrier is authorized to engage in. The Commission has issued various certificates authorizing transportation in regular route and/or irregular route sightseeing and pleasure tours, as evidenced by the following certificates: No. 1, issued to White House Sightseeing Corporation; No. 2, issued to Diamond Tours, Inc.; No. 3, issued to Washington Sightseeing Tours, Inc.; No. 4, issued to the Washington, Virginia and Maryland Coach Company, Inc.; No. 5, issued to D. C. Transit System, Inc.; No. 8, issued to WMA Transit Company; No. 10, issued to Raymond Warrenner, t/a Blue Line Sightseeing Company; No. 11, issued to the Alexandria, Barcroft and Washington Transit Company; and No. 12, issued to the Gray Line, Inc. Copies of these certificates are attached ("A") to this affidavit.

There are four major regular route transit companies under the jurisdiction of the Commission. In the performance of their regular route service, the carriers operate over certain public streets in the Mall area. These streets include Constitution Avenue, 23rd Street, Lincoln

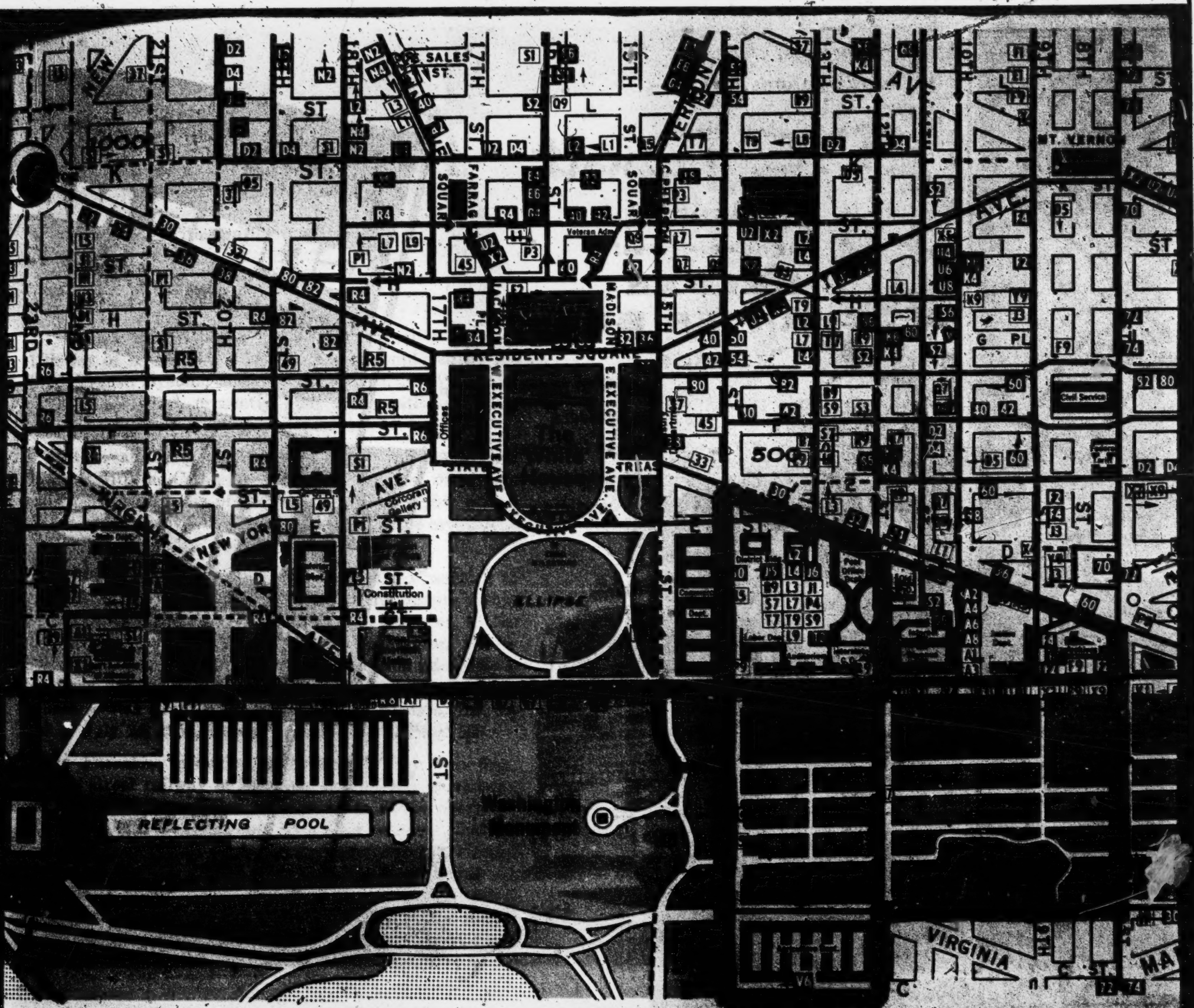
Memorial Circle, Ohio Drive, West Basin Drive, 15th Street, 14th Street, 12th Street, 7th Street, 4th Street, 3rd Street, 2nd Street, 1st Street, Independence Avenue, Pennsylvania Avenue, and Madison Drive. A map of these routes in the Mall area is attached ("B") to this affidavit.

I have spent a large amount of time in the Mall area and have had occasion to view traffic in that area. It has been my observation that all of the above named streets are freely travelled, without restriction, by all members of the public, and private and commercial vehicles have been intermingled without restriction or regulation. These streets appear to be an intricate part of the District of Columbia street system.

The Commission records disclose that various carriers have entered into contracts with different agencies and departments of the United States, to perform transportation for the agency or its employees. The United States agencies and departments include the Department of State, the Department of Defense, the United States Army, the United States Navy, and the Atomic Energy Commission. Approval of the Commission to perform the transportation was sought by the contracting carriers in each instance.

WILLIAM H. MCGILVER
Chief Clerk
Washington Metropolitan Area
Transit Commission
1815 North Fort Myer Drive
Arlington, Virginia 22209

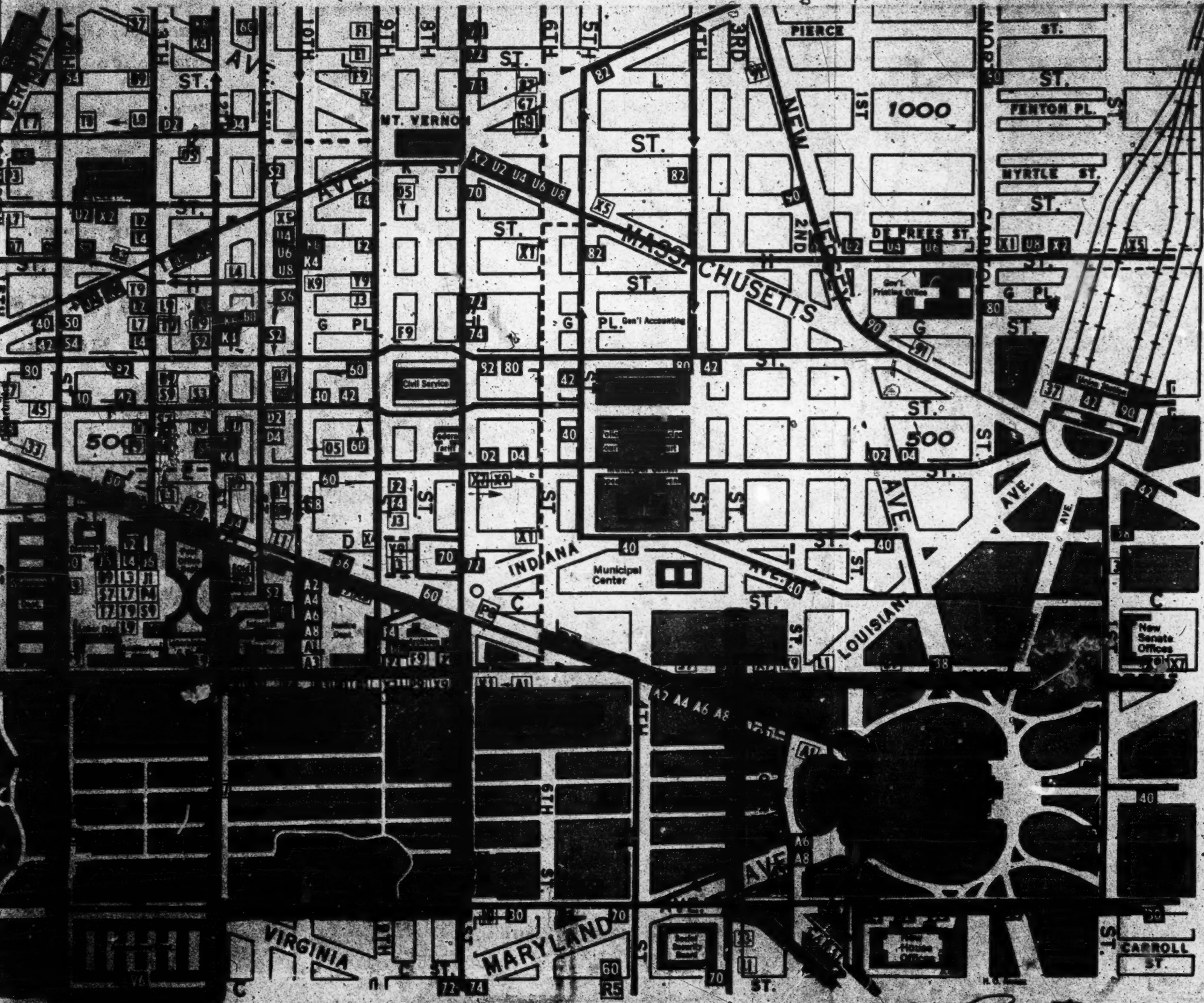
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DC Transit Routes

AB + W Routes

BWV + M



Washington D.C.

W Routes

WV + M Routes

WNA Routes



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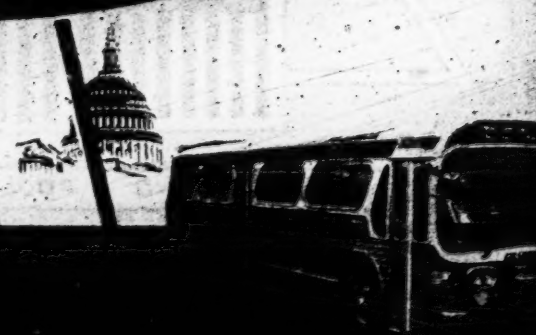
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

Affidavit

DISTRICT OF COLUMBIA, ss:

I, William E. Bell, being first duly sworn under oath this 17th day of April, 1967, state that I am employed by the D. C. Transit System, Inc., 3600 M Street, N. W., Washington, D. C. and presently hold the position of Vice President—Research and Development.

That in attaining my present position, I have been affiliated with the Company and its predecessor companies for a period in excess of 29 years and during this period have been employed in all schedule and traffic operations of the Company.

D. C. Transit System, Inc. was granted a Franchise to operate a mass transit system of passengers for hire within the District of Columbia . . . "subject, however, to the rights to render service within the Washington Metropolitan Area possessed, at the time this section takes effect, by other common carriers of passengers . . ." This Franchise was granted to D. C. Transit System, Inc. by Act of July 24, 1956, Public Law 84-757, 70 Stat. 598.

The Franchise provides in Section 3 that "no *competitive* street railway or *bus* line, that is, bus or railway line for the transportation of passengers of the character which runs over a *given route* on a *fixed schedule*, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia . . . to the effect that the competitive line is necessary for the convenience of the public". (Emphasis added) In other words, quite

separate and apart from the question of whether the Compact, Article XII, Section 4, requires a certification of Defendant's proposed service, the Franchise imposes such a requirement if Defendant's proposed service is a

- (1 competitive
- (2 street railway or bus line
- (3 operating over a given route on a fixed schedule.

All of these conditions have been met herein by the proposed service to be rendered by the Universal Interpretive Shuttle Corporation.

I herewith state that Defendant's proposed service is competitive with D. C. Transit's existing service. D. C. Transit System, Inc. has two types of service operating in the Mall Area. Daily regular route service; Routes A1, A2, A4, A6, A8, A9, P9, D1, \$3, N1, N3, R3, 30, 32, 34, 36, 50, 54, 60, 70, 72, and the Government Minibus Service, is now provided over the major Mall arteries such as Constitution, Independence and Pennsylvania Avenues and 23rd, 17th, 14th, 12th, 7th, 4th and 1st Streets which Defendant proposed to utilize. Additionally, a daily special sightseeing service, with licensed guides, is now provided for tourists in the Mall Area which covers almost every one of the 23 buildings and monuments proposed to be served by the Defendant.

D. C. Transit System, Inc., following preparation by my Department, filed for temporary authority with the Washington Metropolitan Area Transit Commission to operate a service in the Mall Area to be styled "All American Sightseer on the Mall" (April 6, 1967). I have attached hereto as Exhibit No. 1 the material detailing said service.

The contemplated duplication by the Defendant of D. C. Transit's existing services, particularly sightseeing, will have the competitive effect of depriving D. C. Transit of revenues, revenues which are sorely needed to maintain

the financial health of its system-wide operations. I have estimated that the loss per year to D. C. Transit System, Inc. should this duplicative service be commenced would be approximately \$1,275,000.² This figure is based upon the projected loss of \$150,000 in regular route service, \$750,000 in group charter sightseeing, and \$375,000 in daily sightseeing tours.

I have attached hereto copies of Exhibits 2 to 9, inclusive, which demonstrate the fact that the service proposed to be rendered by the Defendant is duplicative of existing service.

Defendant proposes that it will operate a regular route, common carrier, bus passenger service on a fixed schedule. Nothing in the Franchise herein referred to restricts the protection afforded D. C. Transit therein to a given geographical area of the District of Columbia, and the said Franchise protects D. C. Transit against the competition of an operator over the public streets in the Mall Area as fully as an operator over any other public streets in the District of Columbia.

The public will be deprived of any advantage that D. C. Transit derives from its Franchise if the Defendant is authorized to render the proposed service. D. C. Transit's system-wide operation is totally dependent upon its revenues derived from all sources of its operation as well as all areas within the District of Columbia.

Additionally, Defendant proposes to operate "between points in the Metropolitan District". The proposed service will operate over a route extending between Capitol Hill and Lincoln Memorial areas of the District of Columbia. This, I state, is traveling "between points" and constitutes a round trip between Capitol Hill and the Lincoln Memorial. Any other determination or conclusion would be contrary to custom and accepted usage in the transit industry.

D. C. Transit presently provides regular route bus passenger service on fixed schedules on the basis of contracts with the State and Defense Departments of the Government of the United States. These contracts are accepted in the transportation industry as contracts requiring the Transit Company to perform the services therein to be provided and in no instances are the Governmental agencies looked upon or accepted as the performer of the said services. In each instance, the Transit Company provides the equipment, driver, garage facilities, all necessary personnel required to perform the said service and any and all acts to be performed in connection therewith and bears the sole responsibility for the performance of the said contracts. Any determination to the contrary would be counter to the accepted usage and custom within the transit industry.

D. C. Transit System, Inc., in compliance with its Franchise and the Compact, *supra*, has made application for and received from the Governmental agencies all of the requisite authority necessary to perform regular route, common carrier, bus passenger service and sightseeing and charter service.

D. C. Transit has scheduled, and will continue to schedule as well as operate, its regular route, common carrier, bus service, sightseeing, and its charter operations over a major portion of the identical routes proposed to be operated over by the Defendant.

In this connection, a large number of sightseeing buses are operated daily in the Mall Area by other common carriers, local and out-of-State.

Any operation over these routes by the said Defendant without the requisite authority from the Washington Metropolitan Area Transit Commission will deprive the public and D. C. Transit of revenues necessary in maintaining its system-wide, regular route, common carrier, bus operations. To the extent that it is deprived of the said

revenues it will be caused to make application to the WMATC for increases in fares to meet the revenues lost due to the competitive operations of the Defendant.

I further state that the public, as well as D. C. Transit, requires that the bus passenger services being rendered by D. C. Transit in the Metropolitan District be not interfered with by unauthorized carriers as any interference therewith will have a direct adverse economic effect upon the public as well as the Transit Company.

/s/ WILLIAM E. BELL
William E. Bell

[Jurat omitted in printing]

[Note: Exhibits 2 through 9 attached to the foregoing affidavit are located at the end of this appendix.]

E.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

Affidavit

DISTRICT OF COLUMBIA, ss:

William E. Bell, being first duly sworn, under oath, this 26th day of April, 1967, deposes and says:

That the Interpretive Shuttle Service Corporation, defendant in the above-captioned proceeding, will not only cross over and operate on the cross streets known as 14th Street, 12th Street, 9th Street, 7th Street, 6th Street, 4th Street, and 3rd Street, N. W. and S. W., which are under the maintenance, care and supervision of the City of Washington, District of Columbia, when conducting the service proposed in their contract with the National Park Service, Department of the Interior, but as a matter of fact will,

by necessity, have to operate over Third Street, Independence Avenue in the Southwest area, both streets not being within the proclaimed or alleged jurisdiction of the Secretary of the Interior, to 1st Street; thence over 1st Street, S. W. and N. W. to Pennsylvania Avenue; thence over Pennsylvania Avenue between 1st Street, N. W. and 3rd Street, N. W.; thence over 3rd Street, N. W. to Washington Drive. It is respectfully stated that not one of the streets referred to is alleged by the defendant to be under the jurisdiction of the Secretary of the Interior and the operation of the defendant's services referred to in this proceeding must, of necessity, operate over the streets herein named which are solely under the jurisdiction of the City of Washington, District of Columbia.

Observation of D. C. Transit System, Inc.'s map of the City of Washington, Exhibits Nos. 2, 4, 5, 6 and 7 attached to the Affidavit of William E. Bell filed on April 18, 1967, will reveal that passengers boarding the contemplated service of the defendant at the Capitol of the United States must, of necessity, board the said bus on 1st Street, N. W. when endeavoring to board the Defendant's transportation in the vicinity of the Capitol of the United States.

I invite the Court's attention to a Press Release dated March 26, 1967 by the Office of the Secretary, Department of the Interior, a copy of which is attached hereto and made a part hereof, more particularly the last paragraph of Page 1 which states the following:

"Service will be offered daily including Sundays and holidays until Labor Day from 9 a.m. to 10 p.m. at 30-minute intervals. From Labor Day through April 15 the hours will be 9:30 a.m. to 5:00 p.m. No service will be offered on Christmas Day."

The Court will observe that the said statement set out herein above definitely establishes a fixed schedule of service between the hours of 9:00 A.M. and 10:30 P.M., including

Sundays and holidays, except Christmas Day, at thirty-minute intervals.

Paragraph 2, Page 2 of the said Press Release sets forth the following:

"UISC plans to initiate, by November 1 an all-day ticket to sell for \$1 which will permit Mall visitors to board the tourmobile at any stop along the route as many times during the day as desired. All-day tickets for children under 12, will be 75 cents. Beginning next summer a nonstop, uninterrupted tour of the Mall will be offered for 75 cents, on a year-round basis."

By passengers being permitted to board as many times during the day as desired along this route, then the vehicle must, of necessity, follow a given route and if the said route was not adhered to the passengers alighting along the route in question would remain stranded.

The alleged Interpretive Shuttle Service, which the defendant corporation states that it will operate in the Mall Area, is nothing more than the presently conducted lecture tours by D. C. Transit System, Inc. and other companies presently conducting sightseeing and charter operations in the Mall Area.

That with respect to the said guided tours the Court is hereby advised that in order to qualify as a licensed sightseeing guide in the District of Columbia a person or persons must be a resident of the Washington Metropolitan Area for a period of two (2) years. In addition, these licenses are at present issued by the Hacker's Bureau, Government of the District of Columbia, and are issued to those persons who are first able to pass a written examination covering the points of interest, buildings, monuments, museums, and other installations of importance in the City of Washington, District of Columbia. The qualifications and requirements herein referred to are not part of the

requirements of the defendant corporation; on the other hand, all other lecturers seeking employment on guided buses within the City of Washington must meet the requirements herein referred to.

Further, of necessity, all buses operating in the Mall Area must be garaged, maintained and repaired at points and places out of the Mall Area thereby further necessitating transportation of the said vehicles over City streets in the City of Washington, District of Columbia, to and from the said Mall Area.

The defendant advises the Court that the bus and trailer will seat 83 persons when conducting the said transportation. The Court's attention is respectfully invited to the fact that the ordinances and laws of the City of Washington, District of Columbia, restrict the overall length of a vehicle, whether it be more than one part, to an overall length of 50 feet.

Defendant has advised the Court that it will place eleven (11) lecturers at points and places along the Mall whose duty it will be to explain points and places of interest in the Metropolitan District even though the said points and places of interest may not be situated within the Mall Area. We are further advised that there will be no direct charge or cost to the public for the said service and that the only charges to be borne by the public seeking public transportation in the Mall Area will be in the form of fares paid to the defendant as a charge for direct transportation service while traveling on the defendant's buses between the Government buildings situated in the Mall Area.

The Court is advised that D. C. Transit System, Inc. presently operates a 24-hour per day throughout the year information service to the tourist without any direct charge therefor, which service provides the public with information about public buildings, museums, monuments and other points and places of interest even though one or all of them

may not be directly situated on and over a route where D. C. Transit System, Inc. maintains and operates a regular route, sightseeing or charter bus operation. That in addition, D. C. Transit System, Inc. has prepared for distribution to the public, at no cost, brochures and pamphlets which are fully descriptive of the type of tours available to the public at the least possible cost. The Company has prepared and distributed in excess of 30,000 pamphlets per year which enable its enquiring patrons to travel between all Government installations, museums, monuments, etc. within the District of Columbia for the sum of one (1) fare, namely 25 cents.

In addition to the foregoing, D. C. Transit System, Inc. provides lecturers for groups of visitors to the District of Columbia at no cost to them; the purpose of the said lecturer being to acquaint the public with all of the points of interest in the City of Washington, District of Columbia.

/s/ WILLIAM E. BELL
William E. Bell

[Jurat omitted in printing]

[Certificate of service omitted in printing]

VIII

A.

Contract No. 14-10-9-990-27

THIS CONTRACT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Universal Interpretive Shuttle Corporation, a corporation organized and existing under the laws of the State of California, hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, the National Capital Parks area are under the exclusive charge and control of the Director of the National Park Service pursuant to the Act of June 1, 1898, as amended (D.C. Code, Section 8-108); and

WHEREAS, the number of visitors to the central Mall area exceeded twelve million in 1965 and is expected to progressively increase in coming years; and

WHEREAS, the visitor demands require that the Secretary provide increased expert interpretive service in order to properly discharge his obligations to the people of the United States, and it has been determined that such interpretation can best be provided in conjunction with a shuttle service; and

WHEREAS, the United States has not provided such necessary facilities and services and desires the Concessioner to establish and operate the same at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS, the establishment and maintenance of such facilities and services involve a substantial investment of capital and the assumption of the risk of operating loss, and it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a fair profit; and

WHEREAS, it is the intention of the parties that any acts, policies, or decisions of the Secretary under this contract will be consistent with reasonable protection to the Concessioner against loss of its investment and against substantial increase in costs, hazards, and difficulties of its operations hereunder:

Now, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535: 16 U.S.C. 1-3),

and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), and other laws supplemental thereto and amendatory thereof, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as follows:

SEC. 1. Term of Contract. (a) This contract shall be for and during the term from date of execution through December 31, 1977, except as it may be terminated as herein provided. The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of this contract for such stated periods as the Secretary may deem proper upon written application showing circumstances beyond its control warranting such relief.

(b) The granting of the term hereinbefore specified is conditioned upon the Concessioner furnishing equipment necessary to operate a trackless train system to provide visitor interpretive shuttle service as required herein, at a cost of not less than \$500,000. Such equipment shall consist of:

Open-air type vehicles, each consisting of a self-propelled unit, with a passenger capacity of not less than 40, and a trailing unit with a capacity of not less than 43 passengers, the two units to be articulated. The equipment shall have the power capacity of speeds up to thirty (30) miles per hour fully loaded, with the capability of starting with a full load on a ten per cent (10%) upward gradient and to maintain a constant climb at a minimum of five (5) miles per hour. All units shall meet Interstate Commerce Commission and District of Columbia safety requirements. Each complete unit shall contain a sound amplification system, shall have solid panels in the passenger area, and an entrance and exit door with a locking device to prevent vehicle from moving while doors are open. The engine shall be equipped with a smog control device.

The Concessioner shall submit plans and drawings of the equipment for approval by the Secretary within thirty (30) days after date of execution of this contract. After approval of the plans and drawings, the Concessioner shall provide the Secretary with such assurances that the equipment will be provided as contemplated herein, as the Secretary, in his judgment may require, in the form of a bond in an amount not to exceed the cost of furnishing the necessary equipment, or such other document as may be satisfactory to the Secretary. Sufficient equipment shall be provided to operate three trips per hour within four (4) months from the execution date of this contract, and sufficient additional equipment to operate a total of twelve (12) trips per hour shall be provided within one year from such execution date.

In the event the Concessioner fails to provide the said equipment within the time allotted therefor, then this contract shall be for and during a term of one year from the date of execution, except as it may be terminated as herein provided. The time for furnishing the equipment will be extended by the Secretary if the Concessioner is subject to such circumstances or hazards beyond its control which renders meeting the schedule provided herein impossible, unrealistic, or inconsistent with reasonable protection to the Concessioner of its investment, with appropriate extension of the lesser term of this contract, if necessary, as may appear reasonable in the circumstances, and if the said equipment is furnished within such additional period of time as may be granted hereunder, then this contract shall be effective for the full term through December 31, 1977, hereinbefore granted, except as it may be terminated as herein provided.

SEC. 2. Services Authorized. (a) The Secretary authorizes the Concessioner, during the term of this con-

tract, to establish, maintain, and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the city of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, along such routes as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules, and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary. An unreasonable diminution by the Secretary of the services to be performed hereunder shall be deemed to be inconsistent with the Concessioner's reasonable opportunity to make a fair profit.

(b) It is understood and agreed that no other services or facilities are contemplated or authorized hereunder, except that the Concessioner may use temporary equipment approved by the Secretary in initiating service hereunder, pending delivery of the permanent equipment as described in Section 1 hereof, and that the Concessioner will:

(1) Man each vehicle with a driver and an interpreter, the duty of the latter being to provide interpretive information and services to visitors.

(2) Station an interpreter at such stops as may be required by the Secretary to provide information to visitors.

(3) Make such arrangements as may be necessary for administrative offices, equipment storage, shop facilities, and related purposes, provided, however, that the Secretary may permit the Concessioner to use such Government-owned lands and facilities as may be avail-

able for these purposes on a temporary basis for which a charge shall be made, pending the Concessioner completing arrangements for the use of other facilities for such purposes.

(4) Maintain standby equipment as may be necessary to maintain the approved schedule of trips in the event of breakdown of the regular equipment.

(5) Maintain emergency facilities and equipment as may be necessary to remove disabled equipment expeditiously from vehicular traffic routes.

SEC. 3. *Equipment, Personnel, and Rates.* (a) The Concessioner shall provide, maintain, and operate the said equipment, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with an opportunity to make a fair profit on the total of its operations hereunder.

(b)(1) All rates and prices charged to the public by the Concessioner for services furnished hereunder shall be subject to regulation and approval by the Secretary, not inconsistent with an opportunity for the Concessioner to make a fair profit from the total of its operations hereunder. In determining fair profit for this purpose, consideration shall be given to the rate of return required to encourage the investment of private capital and to justify the risk assumed or the hazard attaching to the enterprise; the cost and current sound value of capital assets used in the operation; the rate of profit on investment and percentage of profit in gross revenue considered normal in the type of business involved; the financial history and the future prospects of the enterprise; the efficiency of management; and other significant factors.

(2) Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable services furnished outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

SEC. 4. *Land and Improvements.* (a) The Secretary will assign for use by the Concessioner during the term of this contract, such pieces and parcels of land and government improvements as may be, in his judgment, necessary and appropriate for the operations authorized hereunder.

(b) The Secretary shall have the right at any time to enter upon any lands and improvements assigned hereunder for any purpose he may deem reasonably necessary for the administration of the area and the government services therein, but not so as to destroy or unreasonably interfere with the Concessioner's use of such lands or the improvements thereon.

(c) "Government improvements" as used herein, means the buildings, structures, fixtures, equipment, and other improvements upon the lands assigned hereunder, constructed or acquired by the government and provided by the government for the purposes of this contract.

(d) The Secretary hereby grants to the concessioner the right to occupy and use such government improvements during the term and subject to the conditions of this contract.

(e) The Concessioner shall provide all necessary maintenance and routine repairs of such government

improvements, provided that, if a government improvement is damaged by casualty or requires major repair or rebuilding, then the Concessioner shall not be obligated to repair or rebuild such improvement.

SEC. 5. Utilities. The Concessioner shall secure any utilities at its own expense which may be required for its operations hereunder from local available sources.

SEC. 6. Operational Terms and Conditions. The Concessioner shall conduct the operations authorized pursuant to this contract in accordance with the following terms and conditions:

(a) *Equipment.* (1) All equipment used by the Concessioner to provide the Visitor Interpretive Shuttle Service shall be satisfactory to the Secretary. Except as it may be determined by the Secretary, upon the request of the Concessioner, that a smaller unit will be suitable as additional equipment hereunder, the system shall consist of a trackless train type as specified in subsection 1(b) hereof. Any door in the equipment shall be provided with a locking device to prevent moving while doors are open. All vehicles shall meet Interstate Commerce Commission and District of Columbia safety requirements. It is understood and agreed, however, that substitute equipment, approved by the Secretary, may be used temporarily in initiating the service to be provided thereunder, and that in emergencies, the Concessioner may substitute temporarily for its regular vehicles, other equipment approved by the Secretary, provided, that such emergency periods shall be limited to ten (10) days unless further extended, in writing, by the Secretary. All equipment shall have the minimum power capacity of speeds up to 30 miles per hour fully loaded, and have the capability of starting with a full load on a ten per cent (10%) upward gradient and maintain a constant climb at a minimum of five (5) miles per hour.

(2) Sufficient equipment shall be furnished to operate three trips per hour within four months after the effective date of this contract, and sufficient additional equipment to operate a minimum of twelve (12) trips per hour, within one year from such date. Such additional equipment as may be necessary to meet the increasing needs of visitors, as determined by the Secretary, shall be furnished.

(3) All equipment used in providing the Visitor Interpretive Shuttle Service shall be maintained in such a manner as to provide full operating efficiency at all times and in a safe, clean, sanitary, and orderly condition, and periodic inspections of the equipment, particularly during periods of heavy use, may be made by the Secretary to assure the equipment is so maintained.

(b) *Schedule of Trips.* Because the Secretary has a continuing responsibility in regard to the Mall area, and pedestrian and vehicular traffic thereon, the hours of operation and number of trips per hour shall be subject to regulation and approval of the Secretary. The Visitor Interpretive Shuttle Service is to be available every day of the year with the exception of Christmas Day. The service is to be available between the hours of 9:00 a.m., and 10:00 p.m., from April 15 through Labor Day of each year, and between the hours of 9:30 a.m., and 5:00 p.m., the remainder of the year.

(c) *Interpretation.* Since the interpretive function is a prime consideration hereunder, it must at all times be of the highest quality and it shall be provided by qualified individuals, one of whom shall accompany each trip. In addition an interpreter shall be stationed at each stop as designated by the Secretary. The information on which the narration is based shall be furnished by the National Park Service, and the script shall be approved by the Secretary in advance.

SEC. 7. *Accounting Records and Reports.* (a) The Concessioner shall maintain such accounting records as may be prescribed by the Secretary. It shall submit annually as soon as possible, but not later than sixty (60) days after the 31st day of December, a report for the preceding year giving such information about its business and operations under this contract as may be prescribed by the Secretary, and such other reports and data as may be required by the Secretary. The Secretary shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioner, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of the Concessioner and any subconcessioner have access to and the right to examine any of their pertinent books, documents, papers; and records related to this concession contract.

SEC. 8. *Opening Balance Sheet.* Within ninety (90) days of the execution of this contract, the Concessioner shall submit for the approval of the Secretary a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations. That balance sheet shall be accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values. The Secretary shall notify the Concessioner in writing of his approval or disapproval of the balance sheet within six (6) months after its receipt. If the balance sheet, as submitted, is disapproved, the Secretary shall set out in the notification of disapproval his findings

upon which the disapproval is based. Within thirty (30) days, the Concessioner shall submit a revised opening balance sheet in accordance with the findings of the Secretary. If no notice is given within the six (6) months period, the balance sheet, as submitted, shall be considered as having received the approval of the Secretary.

SEC. 9. Franchise Fee. (a) The Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year during the term of this contract a franchise fee for the privileges authorized herein, as follows:

(1) An annual fee for the use of any government-owned structures assigned to the Concessioner for the purposes of this contract, based on the value of the government-owned structure or structures provided, pursuant to the schedule, identified as "Exhibit A" attached to and made a part of this contract.

(2) In addition to the foregoing, a further sum equal to three per cent (3%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b)(1) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from the interpretive shuttle service, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the area, and excluding gross receipts from cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from activities outside of the area, sales of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are

added as separate charges to approved sales prices, provided that the amount excluded shall not exceed the amount actually due or paid governmental agencies.

(2) The term "gross receipts of subconcessioners" as used in subsection (b)(1) or this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the privileges conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever and the subconcessioners shall report the full amount of all such receipts to the Concessioner within 45 days after the 31st day of December of each year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (b)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed pursuant to the preceding sentence in computing the franchise fee payable to the Secretary as provided for in subsection (1) of this section.

(c) In case of dispute as to the computation of franchise fees to be paid under this contract the determination of the Secretary, consistent with the provisions of this section, shall be final.

(d) Within sixty (60) days after the end of the 3rd, 5th, and 7th years of this contract, at the instance of either party hereto, the amount and character of the franchise fee provided for in subsection (a) of this section may be reconsidered and such franchise fee provisions inserted in lieu thereof as may be agreed upon between the parties hereto in a written supplemental agreement.

SEC. 10. Bond and Lien. The Secretary may, in his discretion require the Concessioner to furnish a bond in such form and in such amount as the Secretary may

deem adequate, not in excess of ten thousand dollars (\$10,000). As additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the government shall have at all times the first lien on all assets of the Concessioner within the area. In the event the title to the equipment to be furnished by the concessioner hereunder is vested in the concessioner's parent or affiliated corporation, any such arrangement shall be subject to the prior approval of the secretary. The owner of such equipment shall be required to agree that the equipment will be subject to all rights of the Secretary under this contract as if the equipment were owned by the concessioner, and will execute such further instruments or assurances as may, in the judgment of the Secretary, be necessary in order to effectuate the foregoing. No such arrangement shall be approved by the Secretary unless complete title, without any outstanding security interests therein, is vested in such parent or affiliated corporation.

SEC. 11. *Termination of Contract by Secretary.* In case of any substantial default or continued unsatisfactory performance by the Concessioner under this contract, the Secretary may terminate this contract by the following procedure:

(a) The Secretary shall give to the Concessioner written notice specifying the particulars of the alleged default of unsatisfactory performance.

(b) Not less than thirty (30) days after receipt by the Concessioner of such notice, the Secretary shall grant to the Concessioner an opportunity to be heard upon the charges.

(c) Following such opportunity to be heard, the Secretary shall have power to determine whether there has been such a default or unsatisfactory performance.

(d) If the Secretary shall decide that there has been such a default or unsatisfactory performance, he shall give to the Concessioner written notice of such decision specifying the particulars thereof.

(e) If the Concessioner fails or refuses to remedy such default or unsatisfactory performance within such reasonable period of time as may be fixed by the Secretary, then the Secretary may declare this contract terminated upon such date or upon such contingency as he may deem proper to protect the public interest.

SEC. 12. Compensation for Concessioner's Personal Property. (a) If for any reason other than for unsatisfactory condition of equipment, or expiration of the term upon December 31, 1977, or such later date as it may expire, the Concessioner shall cease to be authorized to conduct interpretive shuttle service authorized hereunder, or any of them, and thereafter such operations are to be conducted by a successor, whether a private person or any agency of the government, (1) the Concessioner will sell and transfer to the successor designated by the Secretary all property of the Concessioner used or held for use in connection with such operations; and (2) the Secretary will require such successor, as a condition to the granting of a permit or contract to operate, to purchase from the Concessioner such property, and to pay the Concessioner the fair value thereof. The fair value of merchandise and supplies shall be cost. The fair value of equipment shall be cost, including transportation charges, less straight line depreciation.

(b) To avoid interruption of service to the public upon the termination of this contract for any reason, the Concessioner, upon request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to

select a successor, or (2) consent to the use for a period not to exceed six (6) months, by a temporary operator designated by the Secretary of the Concessioner's personal property, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall not be obligated to accept an annual fee for the use of such property of less than the sum of the annual depreciation on such property, plus three per cent (3%) return on the book value of such property.

SEC. 13. *Assignment or Mortgage.* No transfer or assignment by the Concessioner of this contract or of any part thereof or interest therein, directly or indirectly voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the Secretary.

SEC. 14. *Approval of Subconcession Contracts.* All contracts and agreement proposed to be entered into by the Concessioner with respect to the exercise by other of the privileges granted by this contract shall be submitted to the Secretary for his approval prior to the effective date. In the event any such contract or agreement is approved the Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year a sum equal to fifty per cent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 15. *Preferential Right.* (a) The Concessioner is granted a preferential right, not an exclusive or monopolistic right, to provide interpretive services in the Mall area of the character authorized hereunder. The Secretary will request the Concessioner to provide any

additional services, of the same character to other centers of interest in the Federal establishment as the Secretary may consider necessary or desirable. If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional services, the Concessioner shall be allowed sixty (60) days in which to prepare and present its case, but, after consideration of the Concessioner's presentation and such hearings or testimony as the Secretary may consider appropriate, the decision of the Secretary in the premises shall be final. If, after such decision, the Concessioner declines or fails within a reasonable time to comply with the request or demand of the Secretary, then the Secretary may, in his discretion, authorize others to provide such services, but only upon terms and conditions substantially equivalent to those offered or allowed to the Concessioner.

(b) Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by others now authorized or permitted by the Secretary to provide service therein for the public. This subsection shall include also the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 16. Insurance. The Concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is customary among prudent operators of similar businesses under comparable circumstances. The United States shall be named as co-insured in all liability policies carried hereunder.

SEC. 17. Concessioner's Employees. (a) The Concessioner shall require its employees who come in direct contact with the public to wear a uniform, the type and design of which shall be approved by the Secretary, by which they may be known and distinguished as the employees of said Concessioner.

(b) Personnel selected for operating the equipment must have the capability of performing such duties in a safe and businesslike manner, and must be courteous, attentive, of high character, and well groomed at all times.

(c) Personnel selected to perform interpretive service shall be of the highest quality available to the Concessioner consistent with sound business practices of enterprises of the type authorized hereunder with qualifications satisfactory to the Secretary. They shall be trained in performing the service and thoroughly indoctrinated in the history in order that they may properly interpret the sites and answer questions before being assigned to serve the public. They shall conduct themselves in a creditable manner, and be courteous, patient, mannerly, and well groomed at all times. Their on-the-job performance shall be subject to periodic review by the Secretary.

SEC. 18. *Procurement of Goods, Equipment, and Services.* In computing net profits for any purpose of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 19. *Nondiscrimination.* (a) **EMPLOYMENT:** During the performance of this contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, creed, color, ancestry, or national origin. The Concessioner will take affirmative action to ensure that

applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner state that all qualified applicants will receive consideration for employment without regard to race, creed, color, ancestry, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and ac-

counts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 25, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Concessioner will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, That in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

(b) CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions (a)(1) through (7) governing performance of work under this

contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

(c) **FACILITIES:** (1) **Definitions:** As used in subsection 19(c) herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, creed, color, ancestry, or national origin; (ii) discriminating by segregation or other means against any person because of race, creed, color, ancestry, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection 19(c) herein to be incorporated in all of its contracts or other forms of agreement for use of land made in pursuance of this agreement.

SEC. 20. General Provisions. (a) Operations under this contract shall be subject to all applicable laws of Congress and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated.

(b) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(c) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

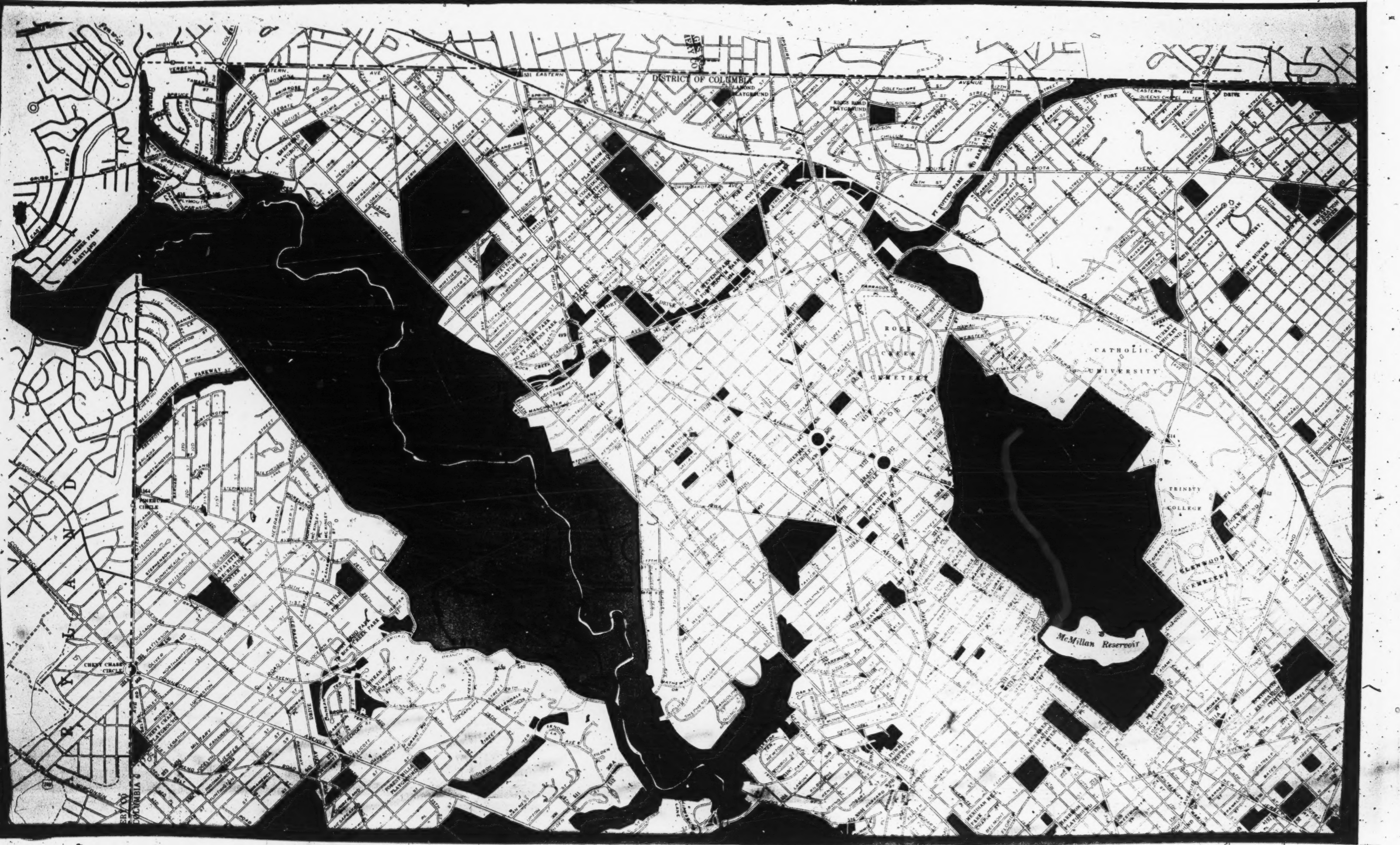
IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at the city of Washington, D. C., this 29th day of May, 1967.

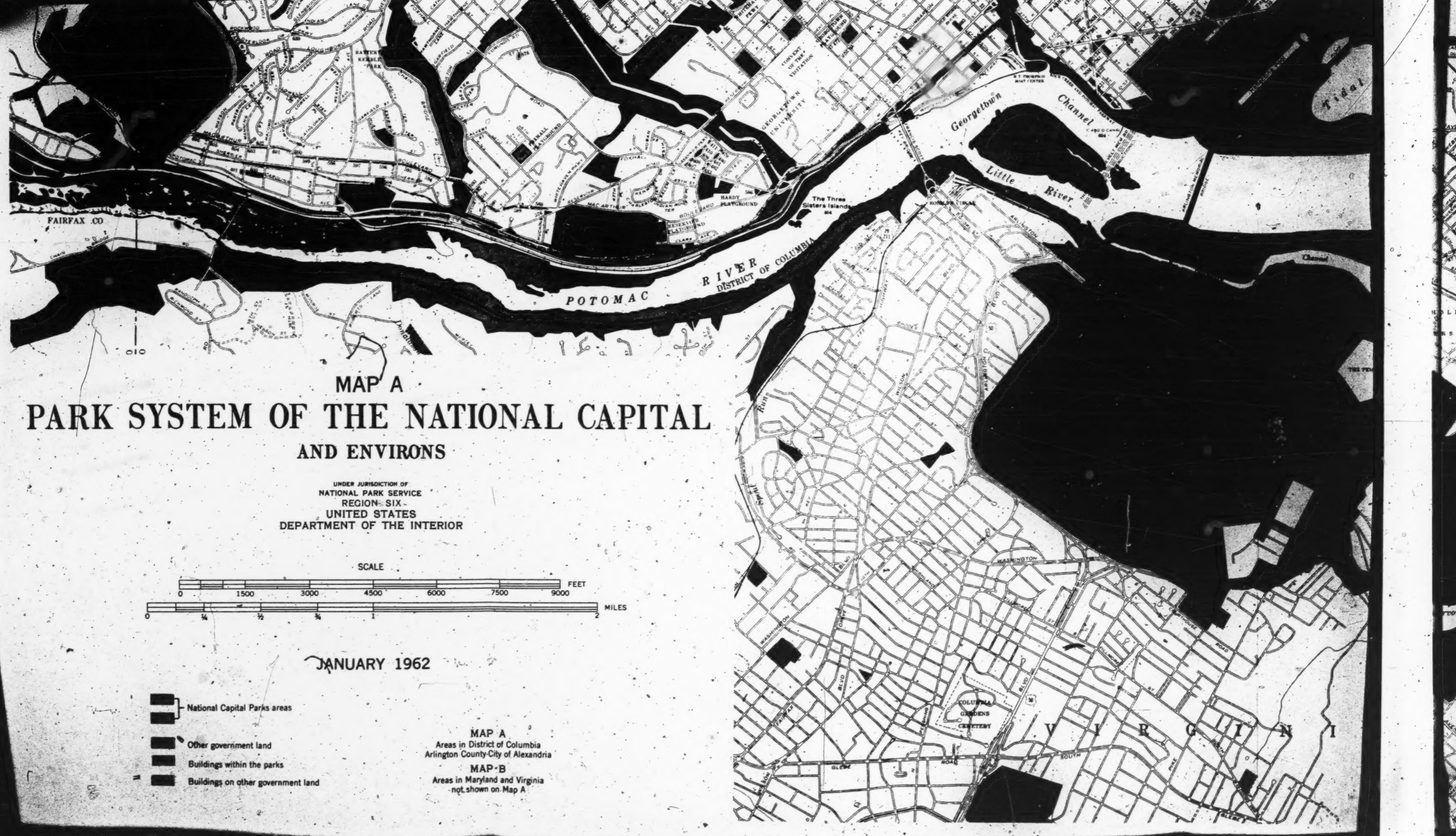
UNITED STATES OF AMERICA
By Harthon L. Bill
Acting Director, National Park
Service

UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION

By Jay S. Stein
Vice President
Date 3/24/67

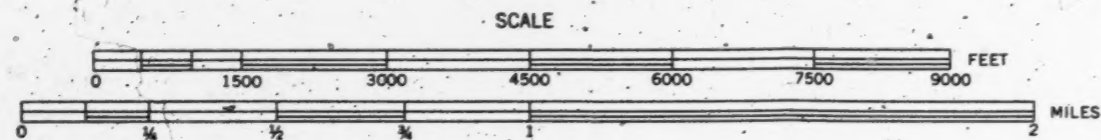






MAP A
PARK SYSTEM OF THE NATIONAL CAPITAL
AND ENVIRONS

UNDER JURISDICTION OF
NATIONAL PARK SERVICE
REGION SIX
UNITED STATES
DEPARTMENT OF THE INTERIOR



JANUARY 1962

- National Capital Parks areas
- Other government land
- Buildings within the parks
- Buildings on other government land

MAP A
Areas in District of Columbia
Arlington County-City of Alexandria

MAP-B
Areas in Maryland and Virginia
not shown on Map A







C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

[Title omitted in printing]

**Affidavit of George B. Hartzog, Jr. in Opposition to
Motion for Preliminary Injunction**

George B. Hartzog, Jr., being duly sworn deposes and says:

I am the Director of the National Park Service of the Department of the Interior, an agency of the United States Government, having been duly appointed to this office on January 6, 1964.

Pursuant to the provisions of the act of July 1, 1898, as amended and supplemented (D.C. Code § 8-108), the Director of the National Park Service is vested with the exclusive charge and control of the park system of the District of Columbia, having in connection therewith the duty to make all necessary rules and regulations for such areas. The streets within and through such areas were thereafter included as being subject to these regulations. (D.C. Code § 8-144). These functions, along with others, were transferred to the Secretary of the Interior pursuant to 1959 Reorg. Plan No. 3, effective May 24, 1950 (15 FR 3174).

The Mall area of the City of Washington is under the administrative jurisdiction of the National Park Service. It constitutes the very center of visitation, the focus of attraction, of the steadily increasing number of visitors to our Nation's Capital. Past and projected visitation figures present a picture with an impact that cannot be ignored by those having a concern for the District of Columbia as the Capital city of the Nation. A survey made by the Stanford Research Institute estimated that 15½ million visitors to Washington in 1960 would grow to 24 million

by 1970, and 35 million by 1980. The National Park Service has a responsibility to the visitor and to all the people of the United States for the management of the area which constitutes the heartland of our National Capital, the central Mall area.

In connection with our responsibilities, a long-range master plan for the Mall has been developed, which has been approved in concept by the National Capital Planning Commission. Major features of the plan include removal of private vehicular traffic and parking in the Mall area, tunnelling of cross streets, and underground parking primarily intended to serve the visitor of one day or less. The purposes behind these plans are germane to the situation presented in this proceeding.

Visitors to Washington are generally unaware of the comparatively few available parking spaces in the Mall and environs, and of the congestion generated by the mixture of vehicular and pedestrian traffic in this relatively limited area. It is our intention, therefore, depending upon the length of the expected visit, to encourage the visitor to leave his car either at his lodging or at a parking lot and to utilize public transportation to the Mall. This will be essential if the increasing number of visitors are to appreciate and enjoy the attractions present in the area.

In the past, repeated complaints have been received in regard to parking on the Mall and the lack of opportunity to see the area. With two or three times the number of people expected in the years ahead, the situation will become intolerable if permitted to continue. Not only have parking and circulation facilities been taxed to the maximum, but more important, facilities for interpreting the area for the visitor are overburdened. The number of people available to answer questions, giving an explanation of the relationship of the Mall to the L'Enfant and McMillan plans, the history of the Smithsonian Institution, the White House, the Capitol, the memorial structures and

other information required to afford the visitor a meaningful experience, is insufficient to meet visitor needs.

Present interpretive facilities are limited. The success of historical walks, for example, demonstrates the desire of the visitor to the City of Washington to be more aware of what he is seeing and how the Capital developed. The repeated request for information on the history of the National Shrines, great American personages, the original plan of the city, and related subjects is ever increasing and requires more and more available expert personnel. Information booths were established in a partial attempt to meet such needs.

In connection with studies made for the Mall Master Plan I determined that new and increased interpretive services were an essential ingredient needed for proper management. Ideas were sought which might be utilized in solving one or more of the administrative problems presented, and when the interpretive tour was brought to my attention I decided that it provided an excellent method by which several problem situations could be alleviated, while at the same time providing a maximum beneficial result to visitors.

Consequently, in order to determine visitor reaction to the proposed interpretive tour, the National Park Service in 1966 instituted a six-week trial period operating open-air vehicles in the Mall area. The trial period indicated overwhelming approval for the interpretive concept and, as a result, and due to the pressing need for initiating our program while at the same time serving the present needs of visitors, it was determined that offers would immediately be sought to operate this interpretive service.

A prospectus was issued by the National Capital Region of the National Park Service, in response to which seven offers were received. After evaluation of the offers it was determined that the proposal submitted by Universal Inter-

pretive Shuttle Corporation provided the best methods of interpretation and operation. Pursuant to the authority available to the Secretary of the Interior (Act of August 25, 1916; 39 Stat. 535 as amended; 16 U.S.C., Section 3, and the act of Oct. 9, 1965; 79 Stat. 969; 16 U.S.C., Section 20) a contract was negotiated with Universal Interpretive Shuttle Corporation on March 24, 1967, to provide service on behalf of the National Park Service in the Mall area of the City of Washington. A copy of that contract is annexed hereto. Contracts of this nature are required to be forwarded to the Speaker of the House of Representatives and President of the Senate 60 days prior to the execution on behalf of the United States.

However, due to the need to institute the service at the earliest possible time, an interim contract was entered into on March 24, 1967 for a term not to extend beyond June 30, 1967. It is essential that preparations get underway for the service in order that the needs of visitors during peak visitation periods in the coming year can be met. Any interruption in this schedule will interfere with the plans which the National Park Service has made for the Mall during the remainder of this year, and for meeting our management problem of relieving congestion in that area. It is deemed essential that the service be instituted at the earliest possible time and that it be continued without interruption.

Duplication of supervision of such service will result in the loss of flexibility necessary for the National Park Service to adjust to conditions in the Mall which are subject to change from day to day as well as from month to month.

Proper park management requires this interpretive service, and this has been determined by us to be necessary in the discharge of our statutory duties. Management of the area also dictates that routes, hours of operation, number of vehicles in operation, stops, and rates to be charged

shall at all times be subject to revision at the direction of the National Park Service.

The objective of providing a quality service to fit the needs of the visitor and changing conditions, if decisions in regard to the service are to be subject to a virtual veto power exercised by Washington Metropolitan Area Transit Commission cannot be met.

GEORGE B. HARTZOG, JR.

Director, National Park Service

[Jurat omitted in printing]

D.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-Civil Division

[Title omitted in printing]

**Affidavit of Robert M. Landau, U. S. Department of the
Interior on Behalf of United States and Defendant**

Robert M. Landau, being duly sworn deposes and says:

I am an attorney-advisor of the Division of Parks and Outdoor Recreation of the Office of the Solicitor, U. S. Department of the Interior.

There is attached hereto as Exhibit A a copy of "Map A" showing the Park System of the National Capital and environs under the jurisdiction of the National Park Service U. S. Department of the Interior.

At present there are no permits outstanding in regard to sightseeing services on the Mall. Tour and sightseeing buses are permitted on park roads in the area on an informal basis for discharge and pickup of passengers participating in a "packaged" tour sold outside of the Mall area. Commercial solicitation of any nature is prohibited

in the absence of a permit.. Bus parking areas designated in various places, and are available on a first-come, first-served basis.

The initiation of the interpretive tour will cause no radical departure from the foregoing and will cause no loss in revenue to the present operations of sightseeing companies visiting the area. In fact initiation of the service should increase the income of the companies.

Continuation of present practice with regard to buses is consistent with the terms of the contract since there will be no duplication of services rendered between Universal Interpretive Shuttle Corporation and the tour and sightseeing companies. Conditions of use of park areas by buses will remain the same after the interpretive service is commenced as before, until such time as long-range plans for the Mall are brought to fruition. The contract between UISC and the United States has reference to a particular type of interpretive service. This includes solicitation, and pickup and discharge of visitors within the Mall area.

Future plans for the Mall envision the substitution of walkways for all roads except for a paved ribbon for the interpretive service. This will of necessity eliminate all vehicular traffic and parking. However, such plans are conditioned in large measure upon new parking facilities for the area either in conjunction with a visitor center, or in and of themselves. In either situation, provision will necessarily be made for sightseeing and other buses.

One possible change in the future is the elimination of all parking on the sides of the Mall roads facing the buildings; to wit: the south side of Jefferson Drive, and the north side of Madison Drive. Four to five times more bus parking spaces will thereafter be provided in the Mall, as follows:

Present bus parking on that part of the road to be restricted totals approximately 15-16 spaces; 2 spaces on

Jefferson Drive west of 9th Street, approximately 5-6 spaces on Madison Drive east of 7th Street; 3 spaces east of 12th Street at the Natural History Museum, and 3-4 east of 14th Street at History and Technology.

If these spaces are eliminated, the south side of Adams Drive, between 9th and 14th Streets will be reserved for bus parking, with an estimated capacity of 60-70 buses. Signs have been ordered to accomplish these purposes, and if and when the changes are made, bus companies will be so notified.

There is attached hereto a copy of the prospectus issued by the National Park Service. In response to the prospectus seven offers were received, from: D. C. Transit System, Inc., Gray Line Tours, Washington Sightseeing Co., White House Tours, Inc., Universal Interpretive Shuttle Corporation, Zoo Tours, Inc. and Robert Nilon.

In connection with the offer of Universal Interpretive Shuttle Corporation the National Park Service satisfied itself as to the financial qualifications and the responsibility of Universal Interpretive Shuttle Corporation.

Constitution Avenue from the river to 15th Street is under the jurisdiction of the National Park Service pursuant to the Act of May 27, 1908, 37 Stat. 356; the Act of March 4, 1909, 34 Stat. 994; the Act of February 24, 1925, 33 Stat. 974, the Executive Order No. 6166 of June 10, 1933.

Pursuant to the contract the routing and scheduling to be followed, which will be solely within park areas; will be designated by the National Park Service. This could include a routing down Constitution Avenue from the Lincoln Memorial to 15th Street or along some other portion of the Mall in this area, such as South Reflecting Pool Drive. The routing and scheduling under the contract remains under the sole discretion of the National Park Service. For instance, when ceremonies attending the reception of

Chiefs of State are held on the Ellipse the proposed service must be varied for security reasons on short notice. All such events as the Cherry Blossom Festival, Fourth of July Celebration, Independence Day Celebration, President's Cup Regatta and other special events may also cause interruption or changes in routing and scheduling within the discretion of the National Park Service.

/s/ ROBERT M. LANDAU
Robert M. Landau

[Jurat omitted in printing]

Submitted by,

/s/ THOMAS L. McKEVITT
Thomas L. McKevitt
*Attorney for the Department
of Justice*

/s/ RALPH S. CUNNINGHAM, JR.
Ralph S. Cunningham, Jr.
Attorney for the Defendant

[Certificate of service omitted in printing]

IX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 793-67

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Plaintiff

and

D. C. TRANSIT SYSTEM, INC., WASHINGTON SIGHTSEEING
TOURS, INC., BLUE LINES, INC., WHITE HOUSE SIGHT-
SEEING CORP., *Plaintiff-Intervenors*

v.

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION
(a California corporation) *Defendant***Opinion and Order****1. The Proceedings**

This is an action for an injunction and for declaratory relief.

The action was instituted by the Washington Metropolitan Area Transit Commission (hereinafter WMATC) to enjoin the defendant Universal Interpretive Shuttle Corporation (hereinafter Universal) from operating a so-called "Visitor Interpretive Shuttle Service" in the Mall area of the City of Washington, D. C. in its capacity as a concessionaire of the National Park Service of the Department of the Interior.

The D. C. Transit, Inc. (hereinafter D. C. Transit), Washington Sightseeing Tours, Inc., Blue Lines, Inc. and White House Sightseeing Corp. have intervened as parties plaintiff.

The United States was granted leave to file a representation of interest to present evidence, file briefs, and otherwise take part in the proceedings.

The hearing on an application for a preliminary injunction was consolidated with a hearing on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. The consolidated hearing was conducted April 25 and 26, 1967.

2. *The Fact Situation*

The central Mall area of the City of Washington is included within the National Park System which is administered by the National Park Service of the Department of the Interior. The Mall is bounded on the north by the White House, on the east by the Grant Memorial, on the south by the Jefferson Memorial, and on the west by the Lincoln Memorial. Because it contains and is flanked by many points of historical, educational, aesthetic and patriotic importance it is a focal point of tourist interest in the Federal City.

It has been estimated that the number of visitors to the Mall area exceeded 12 million in 1965. The National Park Service expects the number to increase progressively in the coming years.

To increase the enjoyment and appreciation of the people visiting the Mall area, in the Fall of 1966 the Secretary of the Interior instituted, on an experimental basis, a so-called "interpretive shuttle service" to operate within the Mall area and to move visitors through the Mall to the various points of interest. The experiment was deemed a success, and accordingly the Secretary decided to institute the service on a more permanent basis. To that end he prepared a prospectus (Washington Sightseeing Ex. 1) and solicited proposals from various private interests thought to be capable of supplying the type of service contemplated. Among the private interests invited to submit proposals, and which did submit proposals, was the intervenor D. C. Transit, and the defendant Universal.

Universal won the award, and the Secretary, acting through his Director of National Parks, thereupon negotiated a contract with Universal (U.S. Ex. 4). The contract bears date of March 17, 1967. It covers service to begin in 1967 and extending through December 31, 1977. But since a contract of such duration—roughly 10 years—is subject to a 60-day Congressional waiting period, the Director of the National Park Service entered into an interim agreement which would not require a Congressional waiting period in order to initiate the service as soon as possible to meet the demands of the tourist season of Spring 1967. By the interim agreement it was stipulated that the shuttle service would commence on May 1, 1967.

Section 2 of the basic contract authorizes the concessionaire Universal

“[T]o establish, maintain and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the City of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules, and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary.”

The Contract requires Universal to station guides, wearing uniforms prescribed by the National Park Service, at designated points of national interest. These stationary guides must be prepared to furnish information about the City and its facilities to any person regardless of whether they have paid for the visitors interpretive shuttle service.

The concessionaire is also required to operate trackless trains ("trams") bearing the National Park Service identification along a route lying wholly within the boundaries of the Mall area of National Capital Region, National Park Service, approximating 6.5 miles in total length.¹ Each tram is to be manned by a driver and tour guide wearing the uniforms prescribed by the National Park Service. As the tram proceeds along the prescribed route the guides are to give a narration to the visitors, the contents of which must be approved in advance by the Director of the National Parks. Each tram is required to stop at 11 designated points of interest.

Two basic types of interpretive tour service are contemplated by the Contract: (1) a "round trip" interpretive

¹ The exact route to be followed by the Interpretive Shuttle Service is within the control of the Secretary. But as required by Section 2a of the Contract it will be "within the Mall area of the City of Washington." On the basis of the experiment conducted in 1966 it is generally assumed that the starting and ending point of the shuttle service will be in the Monument grounds, and that it will proceed as follows: East out of the Monument grounds through the Mall via Jefferson and Adams Drives to 2nd Street; briefly north on 2nd Street to connect with Washington Drive; west through the Mall by Washington and Madison Drives to the Monument grounds; south through Park land, on the west side of the Bureau of Engraving and Printing; then continuing to and encircling the Jefferson Memorial; thereafter by way of Ohio Drive and 23rd Street to Lincoln Memorial; passing between the Reflecting Pool and the Memorial; then via Beacon Drive to Constitution Avenue and east to the Ellipse; circling the Ellipse and returning through the Monument grounds to the starting point. This route according to the official map which was introduced as U. S. Exhibit No. 6 will require the vehicles to cross 14th, 7th, and 4th Streets and proceed briefly on 2nd Street. Otherwise the tour will be entirely within the Park grounds. It should be noted, however, that Title 8, Section 144 of the D. C. Code specifically authorizes the passage by Park authorities over the D. C. public streets for purposes of going from one section of Park land to another.

tour originating and terminating at the same point, and (2) a service whereby passengers can commence the narrated tour, proceed to a given point of interest, debark, remain at that point of interest and later join another tram at that point and continue the narrated tour. The interpretive function is by the terms of the contract "a prime consideration" (Sec. 6(c)). Every phase of the activities of Universal is to be under close and continuous regulation by the National Park Service, including the type and number of mobile units to be utilized, rates, routes, hours of service, days of service, schedule of trips, and content of narration.

The Secretary prescribes the manner in which the accounting records of Universal shall be maintained. Both the Secretary and the Comptroller General of the United States have access to and the right to examine any of the pertinent books, documents and records of Universal. Universal will be required to carry insurance in amounts approved by the Secretary against losses by fire, public liability, employee liability and other hazards. The United States of America must be named as co-insured in all liability policies. Performance bonds may be required by the Secretary in his discretion. The United States will have a first lien on all assets of Universal utilized in the visitors interpretive shuttle service.

Shortly after the execution of the interim agreement contemplating the initiation of service on May 1, 1967, the plaintiff WMATC notified Universal that the proposed service would be subject to the jurisdiction of WMATC and that a certificate of necessity and convenience would have to be awarded by WMATC before Universal could operate.

Universal replied in part as follows:

"Prior to entering into the contract of March 24, 1967, we were advised that in the opinion of the Department

of the Interior the Interpretive tour service required by the contract would be subject only to the requirements imposed by the United States of America, acting in this behalf by the Secretary of the Interior through the Director of the National Park Service. Therefore, Universal Interpretive Shuttle Corporation respectfully declines to apply for a certificate of convenience and necessity from the Washington Metropolitan Area Transit Commission at this time."

This action followed.

3. The Respective Claims

The claims of the respective parties are briefly these:

WMATC asserts that under the terms of the Compact by which it was created, no one not specifically excepted by the terms of the Compact may engage in the transport of passengers for hire within the Metropolitan area of Washington without first obtaining a certificate of necessity and convenience from WMATC; that the National Park areas of the District of Columbia are within the geographical area, controlled transportation-wise by WMATC; that the intended operations of the defendant as a concessionaire of the National Park Service are not exempted by terms of the Compact; and that the defendant accordingly must seek a certificate of convenience and necessity from WMATC.

D. C. Transit adopts the WMATC argument, and additionally asserts that the proposed service by Universal will constitute transportation of persons for hire on a scheduled service over a fixed route which will traverse portions of D. C. Transit's regular routes and substantially duplicate its regular services; that such duplication of service will deprive D. C. Transit of substantial revenues; that such services will be derogatory of the protection afforded by the franchise granted to D. C. Transit by Congress (70

Stat. 598, 1956). They also assert that they run charter and sightseeing services which will be substantially affected by the projected operation.

The other intervenors do not operate regularly scheduled services. They operate under certificates of convenience and necessity from WMATC for irregular service such as charter and sightseeing. Under these certificates they run sightseeing trips to and through the Mall and to the various points of interest. They too adopt the position of WMATC and assert possible loss of revenue as a result of the operation of the prospective services.

The defendant Universal and the United States take the position that the Mall is a National Park area under the exclusive jurisdiction of the Department of Interior; that the Compact did not effect a cession of jurisdiction within that area to WMATC; that the contemplated service is not embraced within the terms of the Compact; and that in any event the services proposed to be rendered will constitute a governmental operation, which is exempt from the coverage of the Compact by express exception.

4. Discussion

There has never been any question, and it is not disputed in this case, but that the Secretary of Interior by authority of Congress has been vested with exclusive jurisdiction over the maintenance and operation of all national parks and monuments (16 U.S.C. 1).

This exclusivity of jurisdiction has been specifically extended to any national park area within the District of Columbia by D.C. Code 8-108 et seq.

Further, in the maintenance and operations of the Park System the Secretary of Interior has been accorded the power to contract for services and accommodations in the Park areas and to set the rates therefor (16 U.S.C. 17(b)). And, in that connection, the Secretary has been directed

to encourage private concessionaires to provide the services and facilities when practicable (16 U.S.C. 20(a)).

WMATC would challenge this exclusive jurisdiction urging in substance that when the three political bodies—the States of Virginia and Maryland and the District of Columbia—entered into a Compact creating WMATC, and when Congress consented to that Compact and suspended the application of certain U. S. Laws which theretofore had been applicable to the transit situation, exclusive jurisdiction was vested in WMATC over any and all “transportation for hire” in the Metropolitan area, even interpretive shuttle services in the park areas, in derogation of the jurisdiction of the Secretary of Interior.

Analysis of the consent legislation and of the Compact and underlying purposes of the Compact will not support this position.

The provisions of the Compact which are relevant to the issues in this case are these:

“Title II

Article XII

“1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

.

“(2) Transportation by the Federal government, the signatories hereto, or any political subdivision thereof;

.

“2. As used in this Act—

(a) The term ‘carrier’ means any person who engages in the transportation of passengers for hire by motor

vehicle, street railroad, or other form or means of conveyance.

“4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation;”

A copy of the pertinent provisions of the consent legislation (P.L. 86-794, Sept. 15, 1960) is attached hereto as Appendix A.

It will be noted that in the preamble to the consent legislation there are not less than four references to “mass transit” within the Metropolitan area of Washington. It will be further noted that in the enacting language of Section 3 by which Congress suspended the applicability of certain laws of the United States, it suspended only those laws which were inconsistent with and in duplication of the provisions of the Compact. And still further it will be noted that the suspension applied to only such laws as related to or affected transportation *under the Compact*. It then went on to provide that

“[N]othing in this Act or in the Compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities.”

All of the foregoing statutory material must be viewed and construed in the light of the circumstances under which the Compact was brought into play. The following excerpt from House Report No. 1621, accompanying House Joint Resolution 402 succinctly states the situation which existed

and which was projected to exist justifying the need for the Compact (pp. 5-6).

"According to testimony adduced at the hearings the Washington Metropolitan area has experienced a rapid rate of growth in the post-war years (hearings cited supra, pt. 1, pp. 47-48). Except for relatively moderate growth in the District of Columbia, this growth has occurred in the Virginia and Maryland counties. This population growth has been accompanied by a physical expansion of the urbanized area. The increase in the number of automobiles has been even at a greater rate. It is estimated that the number of automobiles in the metropolitan area doubled in the 7-year period between 1948 and 1955 (transportation plan, National Capital Region (1959) p. 24). The growth in population, automobiles, and physical area is continuing.

"These changes have been accompanied by an increasing dependence on the private automobile and a decreasing patronage of public transit (transportation plan, cited supra pp. 12, 24). As a result, traffic has become a major problem of overgrowing proportions. At the present time, the population of the area stands at slightly more than 2 million, whereas it was approximately 1,850,000 in 1955 (transportation plan, supra pp. 2, 16). It is estimated that the population will increase to 2,400,000 by 1965, and 3 million by 1980 (transportation plan, supra p. 16). This projected growth, superimposed upon the present congestion of traffic, clearly demonstrates the need for remedial action.

"After 4 years of study and work, the National Capital Planning Commission and the National Capital Regional Planning Council, on July 1, 1959, issued its transportation plan for the National Capital region.

This plan contemplates a balanced system of transportation providing for private automobile traffic and a system of mass transit consisting of a combination of rail and express bus service.

"The transportation plan proposes that the development of the transportation system take place in three stages. As the first step, the plan recommends that immediate action be taken to improve the present public transit service by centralizing regulation of existing privately owned transit on a regional basis to overcome the barriers imposed by jurisdictional boundary lines. This is the function of the instant compact.

"The transportation plan points out that there is no existing machinery of Government capable of handling on a regional basis the problems presented in each of the three stages of development and that adequate governmental machinery must be brought into being. The transportation plan recommends the Washington metropolitan area transit regulation compact as a suitable means of handling the first stage problem of improving the present public transit service.

"Thus, the function of the instant compact is to improve transit service offered by the existing privately owned transit companies through coordinated regulation and improvement of traffic conditions on a regional basis. The transportation plan does not require the elimination of privately owned and operated carriers, but anticipates their continued existence with the possibility that such carriers may enter into agreements with the subsequent proprietary agencies to operate the publicly owned facilities. Thus, the regulatory functions to be performed by the subject compact are not only required presently, but will be required

as long as private transit continues to operate in the metropolitan area."

It is obvious from the foregoing material that when the Compact was brought into being it was designed primarily to regulate "mass transit" of commuter traffic between the highly urbanized neighboring areas in Maryland and Virginia and the Federal City over the customary public routes generally followed by scheduled bus lines. There is nothing in the Compact or the history of the Compact which would hint that it was intended to limit the exclusive jurisdiction of the Secretary of the Interior to maintain and operate the Park enclave, and, if he so desired, to run a tram within the Park enclave for the edification of visitors. The plaintiff and the plaintiff-intervenors carefully emphasize the words "transportation for hire" and "Metropolitan area." They carefully gloss over the references to "mass transit" and the limiting language of the Compact itself confining its impact to transportation "within the meaning of the Compact." It is the opinion of this Court that the transportation to be provided by the Secretary incidental to his educational campaign and to be operated within an enclave over which the Secretary has exclusive jurisdiction is clearly not transportation *under the Compact*.

This opinion is bolstered by the fact that the Court can find no inconsistency with or duplication of the statutes conferring exclusive jurisdiction over the Parks to the Secretary, and the Compact regulating mass transit thus requiring a suspension of the statutes under which the Secretary operates. It is interesting to note, and it should be emphasized, that the Report of the previously cited Hearings on the Compact contains a specific list of the laws which the Congress thought would be suspended during the operation of the Compact, and that list does not contain any law or regulation under which the Secretary has

exercised his jurisdiction over the D. C. Park System. Further, it should be noted that under the Compact the WMATC was granted that jurisdiction which had previously been possessed and exercised by the predecessor regulatory agencies operating within the Metropolitan area, namely the Public Service Commission of Maryland, the Public Utilities Commission of the District of Columbia, the Corporation Commission of Virginia, and the Interstate Commerce Commission of the United States—and none of those entities ever pretended to exercise jurisdiction over the National Park areas.

Accordingly, this Court does not accord the WMATC any jurisdiction to require the Secretary or his agent to apply for a certificate of convenience and necessity for the projected operations.

Even if the Court were to accept the construction of the words "transport" and "transportation for hire" which are placed upon those words by the WMATC and plaintiff-intervenors, or could conceive of the possibility that the WMATC has some jurisdiction over the movement of people within this Government owned enclave, or that the Congress by its action in consenting to this legislation suspended the exclusive authority of the Director of the National Park Service, the Compact by its own terms clearly excepts transportation by the Federal Government. (Article XII, Sec. 2(a)).

The WMATC contends of course that the operation here proposed will be conducted by the defendant and not by the Government; that for the transportation to be "transportation by the Federal Government" it must be conducted by the Government directly. As an example of a properly exempted service the WMATC cites the six-week test shuttle service in 1966.

The Supreme Court disposed of this argument in the case of *Yearsley v. W. A. Ross Construction Co.*, 309 U.S.

18 (1940) when it held that the acts of a contractor, authorized and directed to perform certain services for the Government, were the acts of the Government. In that case the defendant, a government contractor, was sued for damages on the ground that he had in the course of building dikes for the Government on the Missouri River produced erosion and washed away a portion of the plaintiff's land. The Supreme Court held that since the act of the contractor was authorized and directed by the United States it was the act of the United States and so relegated the plaintiff to a suit against the United States in the Court of Claims.

The concessionaire in this case stands on no different footing. Merely because he is a concessionaire and deriving his income from a percentage of the gross intake does not place him in a different class than the usual contractor. One need only read the contract between the Secretary and Universal to appreciate the high degree of control which the Secretary exercises over this concessionaire to remove him from the category of an independent operator. The WMATC argument on this score is accordingly rejected.

We turn now to the D. C. Transit claim that the proposed interpretive tour service would violate the protection guaranteed by Congress in the Act of July 24, 1956 (70 Stat. 598).

D. C. Transit relies upon Section 3 of its franchise which provides:

"No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without prior issuance of a certificate by the Public Utilities Commission of the District of Columbia . . ."

Initially it is difficult to characterize the proposed operations of the shuttle service as proceeding over "a given route" on a "fixed schedule" when it is apparent from the contract with the defendant Universal that the Secretary has not designated a route, has not designated a schedule, and reserves the right to direct how the shuttle service shall be conducted at any given time. But wholly aside from that observation, it appears to the Court that D. C. Transit is overreaching when it claims Section 3 protection against this shuttle service. In our opinion, what Congress intended to give the D. C. Transit was protection in the operation of its day to day activities in the mass movement of the public of Washington, D. C. over the D. C. streets. What the Secretary is proposing to do is in no wise competitive with that fundamental function of the D. C. Transit System.

Apparently the D. C. Transit does operate some fixed routes from time to time through the Mall area for which it seeks specific permission from the Secretary of the Interior, thus recognizing his absolute control over operations within that area. Those are bus commuter services rather than sightseeing services and would hardly be deemed competitive with the shuttle service as envisioned by the contract with Universal.

For the most part, however, the D. C. operations within the Mall area are conducted on a charter or sightseeing basis under the separate and unprotected authority of Section 6 of the D. C. Transit franchise, and with the permission of the Secretary of the Interior. This is true also of the other plaintiff-intervenors who operate irregular service on a charter or sightseeing basis. Conceivably and probably a competitive situation will exist to some extent between the sightseeing services offered by the D. C. Transit and the other plaintiff-intervenors and the shuttle system. But neither the D. C. Transit nor the plaintiff-intervenors have cause to claim protection from this type

of competition. D. C. Transit and the plaintiff-intervenors are permitted to use the Mall area by sufferance and only with the specific consent of the Secretary of the Interior. He could if he saw fit exclude them from the area entirely. *U.S. v. Gray Line Tours of Charleston*, 311 F.2d 779 (4th Cir. 1962). As a matter of fact, it is envisioned in the long range plan for the development of the Mall that all vehicular traffic will be excluded and that all present existing crossroads will become tunnels.

It seems to the Court that parties who enjoy the right to operate their sightseeing services within the Mall area only at the sufferance of the Secretary of the Interior have no standing whatsoever to ask this Court to enjoin the Secretary from similar operations on his own account.

This opinion constitutes the findings of fact and conclusions of law of the Court.

In the light of such findings and conclusions, it is this 1st day of May, 1967,

ORDERED that the complaint is dismissed, and it is

FURTHER ORDERED that the petition for an injunction and for declaratory relief is denied.

/s/ H. F. CORCORAN
Judge

X

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1966

Civil 793-67

No. 20,975

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Appellant

No. 20,976

WASHINGTON SIGHTSEEING TOURS, INC., *Appellant*

No. 20,977

BLUE LINES, INC., and WHITE HOUSE SIGHTSEEING CORP.,
Appellants

No. 20,978

D.C. TRANSIT SYSTEM, INC., *Appellant*

v.

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
(a California corporation), *Appellee*

Before: Fahy, Senior Circuit Judge,
and Danaher and Robinson, Cir-
cuit Judges, in Chambers.

Order

Whereas a majority of the court are of the opinion that the various relevant statutory provisions, construed in relation one to the other, especially in view of the physical location of the Mall in the Metropolitan area of the District of Columbia, do not afford authority to the appellee Universal Interpretive Shuttle Corporation validly to engage in such transportation for hire in the Mall area as is contemplated by the contract between the Secretary of the Interior and appellee dated March 17, 1967, more fully described in the complaint, without a certificate

of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission authorizing such transportation, and

Whereas it is deemed that the interests of the parties and of the public would be better served by this prompt disposition of the appeals rather than to delay decision pending the formulation and issuance of elaborating opinions, though each member of the court reserves the right to file later, in opinion or statement form, his more detailed reasons for his position,

The order of the District Court of the 1st day of May, 1967, dismissing the complaint and denying the petition for injunction and declaratory relief is reversed, and the cause is remanded so that appropriate further proceedings and relief consistent with this order may be granted.

It is so ordered.

Circuit Judge Robinson, being of opinion the order of the District Court should be affirmed, dissents.

XI

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1967

Civil 793-67

No. 20,975

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Appellant

v.

UNIVERSAL INTERPRETIVE SHUTTLE CORP., *Appellee*.

No. 20,976

WASHINGTON SIGHTSEEING TOURS, INC., *Appellant*

v.

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION, *Appellee*.

No. 20,977

BLUE LINES, INC., and WHITE HOUSE SIGHTSEEING CORP.,
Appellant

v.

UNIVERSAL INTERPRETIVE SHUTTLE CORP., *Appellee*.

No. 20,978

D.C. TRANSIT SYSTEM, INC., *Appellant*

v.

UNIVERSAL INTERPRETIVE SHUTTLE CORP., *Appellee*.

Before: Bazelon, Chief Judge; and
Danaher, Burger, Wright, Mc-
Gowan, Tamm, Leventhal and
Robinson, Circuit Judges, in
Chambers.

Order

On consideration of appellee's petition for rehearing *en banc* and of the responsive pleadings filed with respect thereto, and there not being a majority of the circuit judges of this circuit in favor of a rehearing of the above-entitled cases by the court *en banc*, the petition for rehearing *en banc* is hereby denied.

For the Court:

Acting Chief Judge.

Circuit Judges Wright and Robinson would grant appellee's aforesaid petition.

Circuit Judge Leventhal did not participate in the foregoing order.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 978

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL.

Filed March 4, 1968

Order Allowing Certiorari

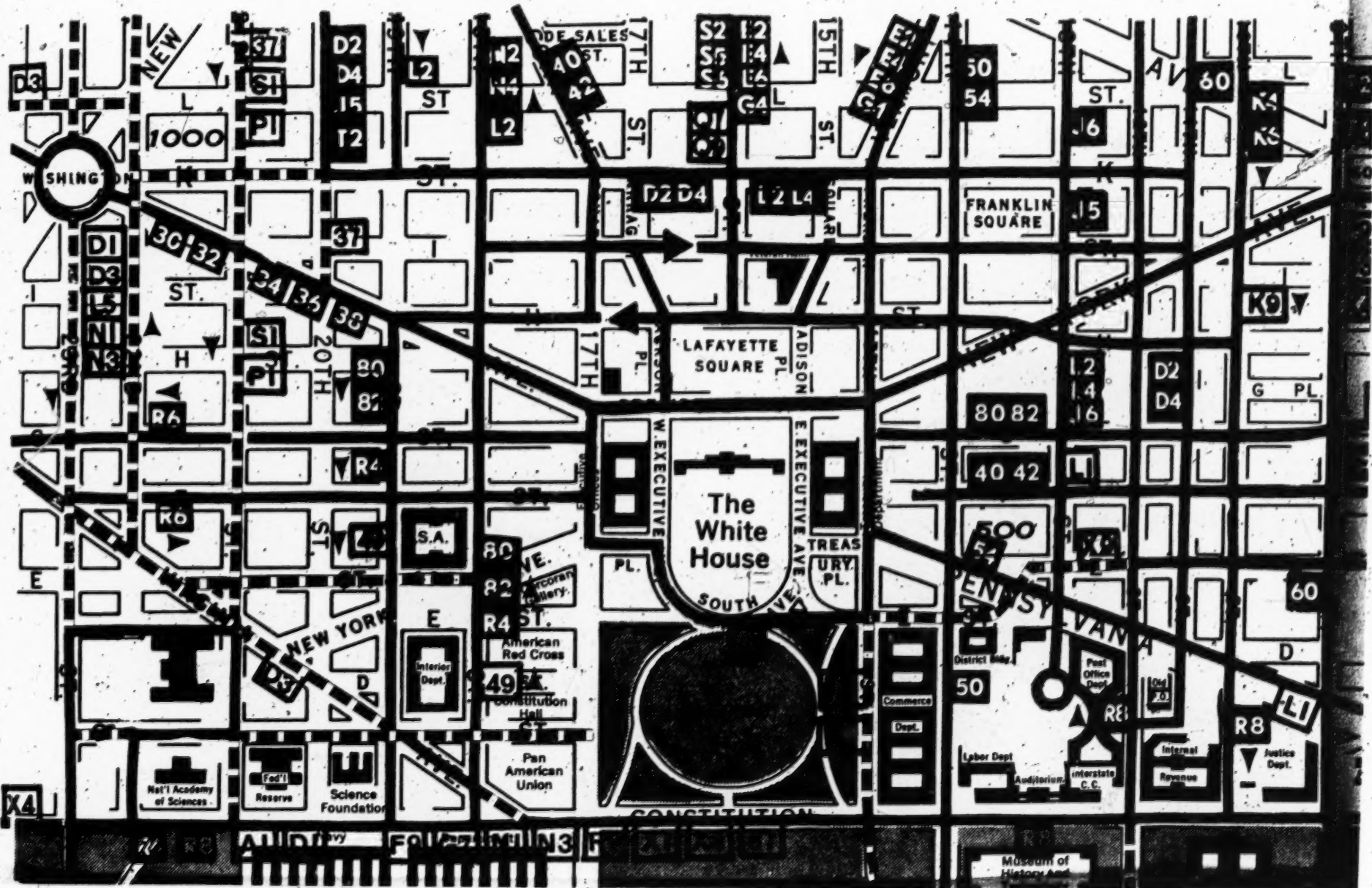
The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is placed on the summary calendar.

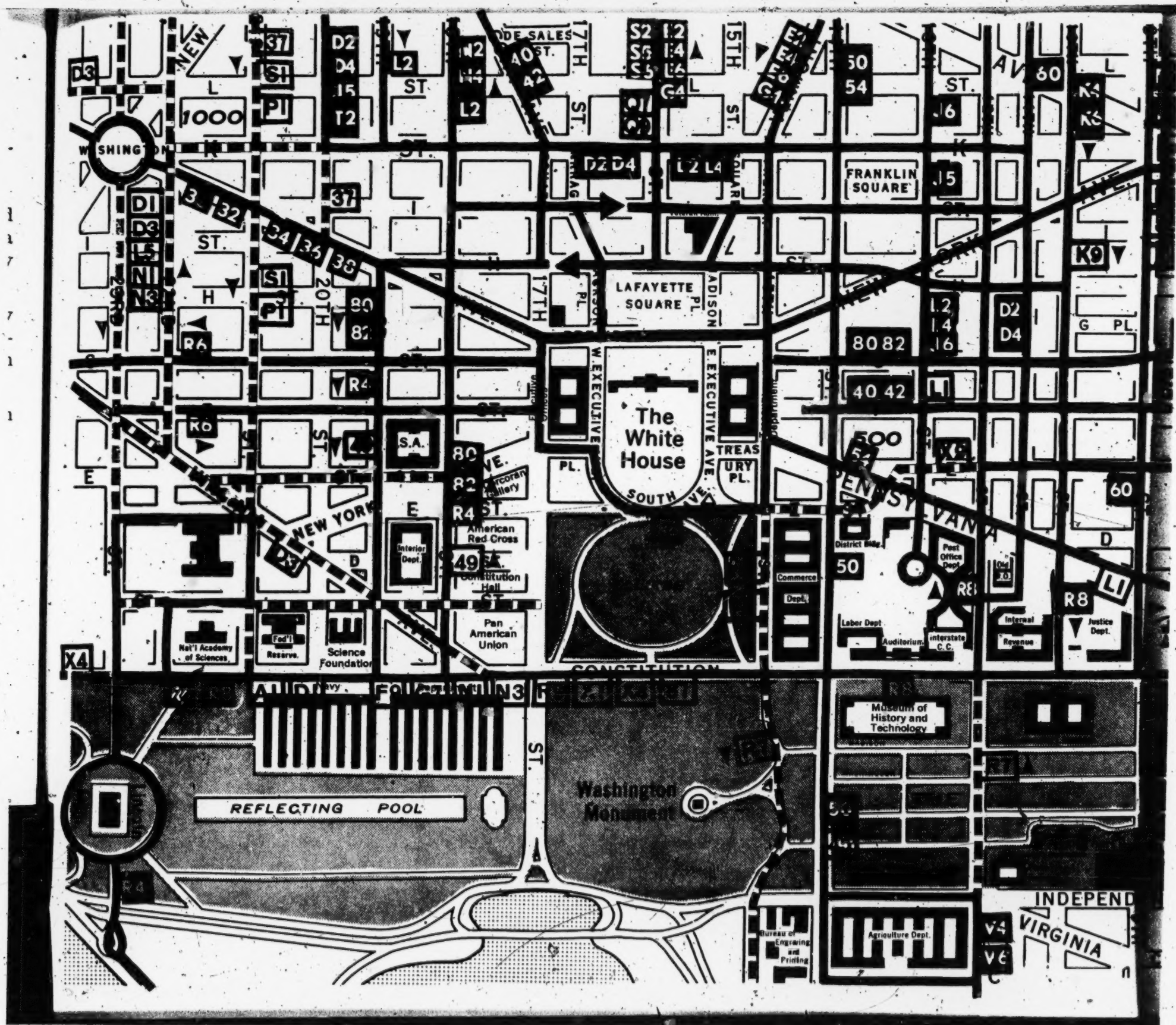
And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Marshall took no part in the consideration or decision of this petition.

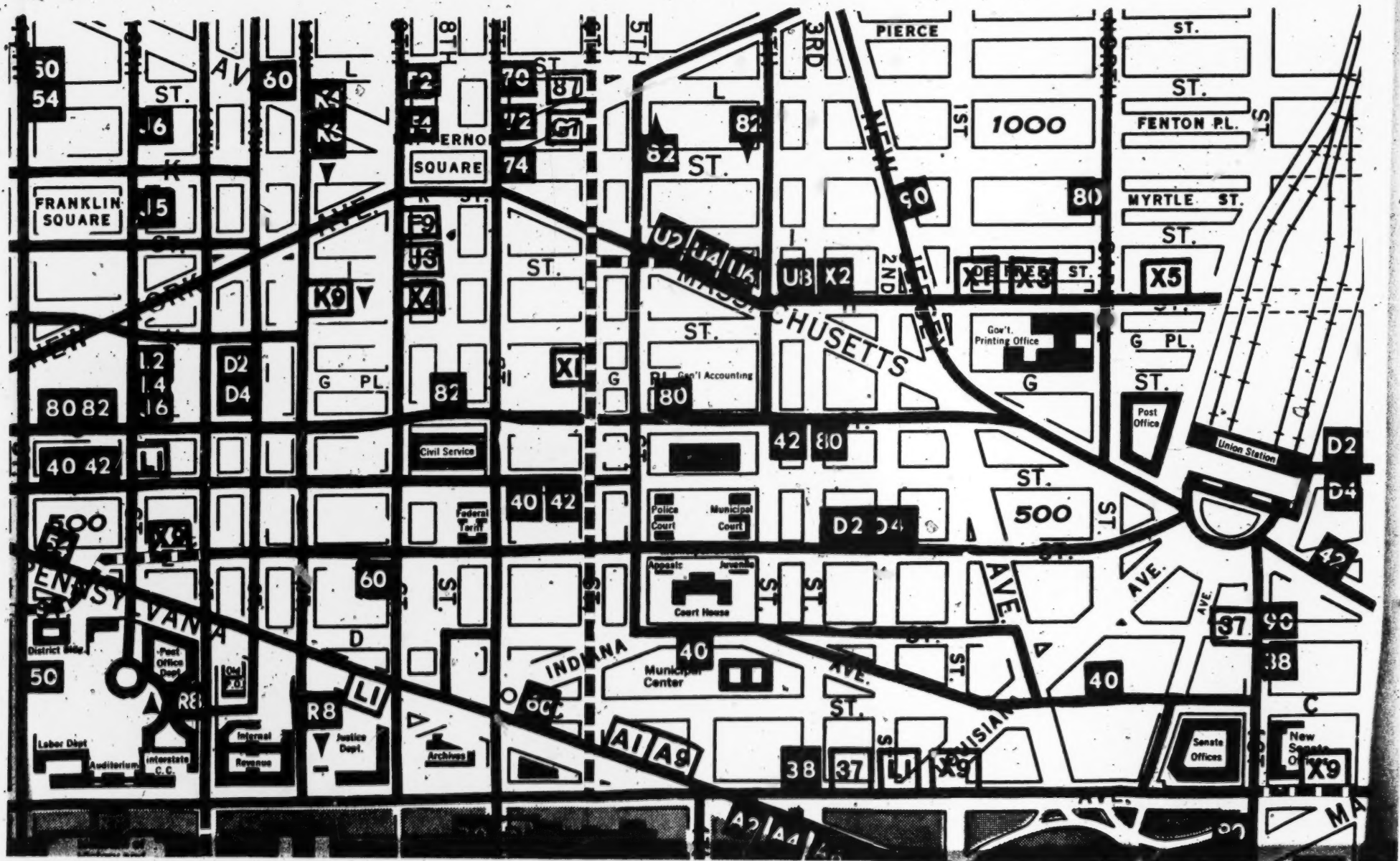
D.C. Transit System

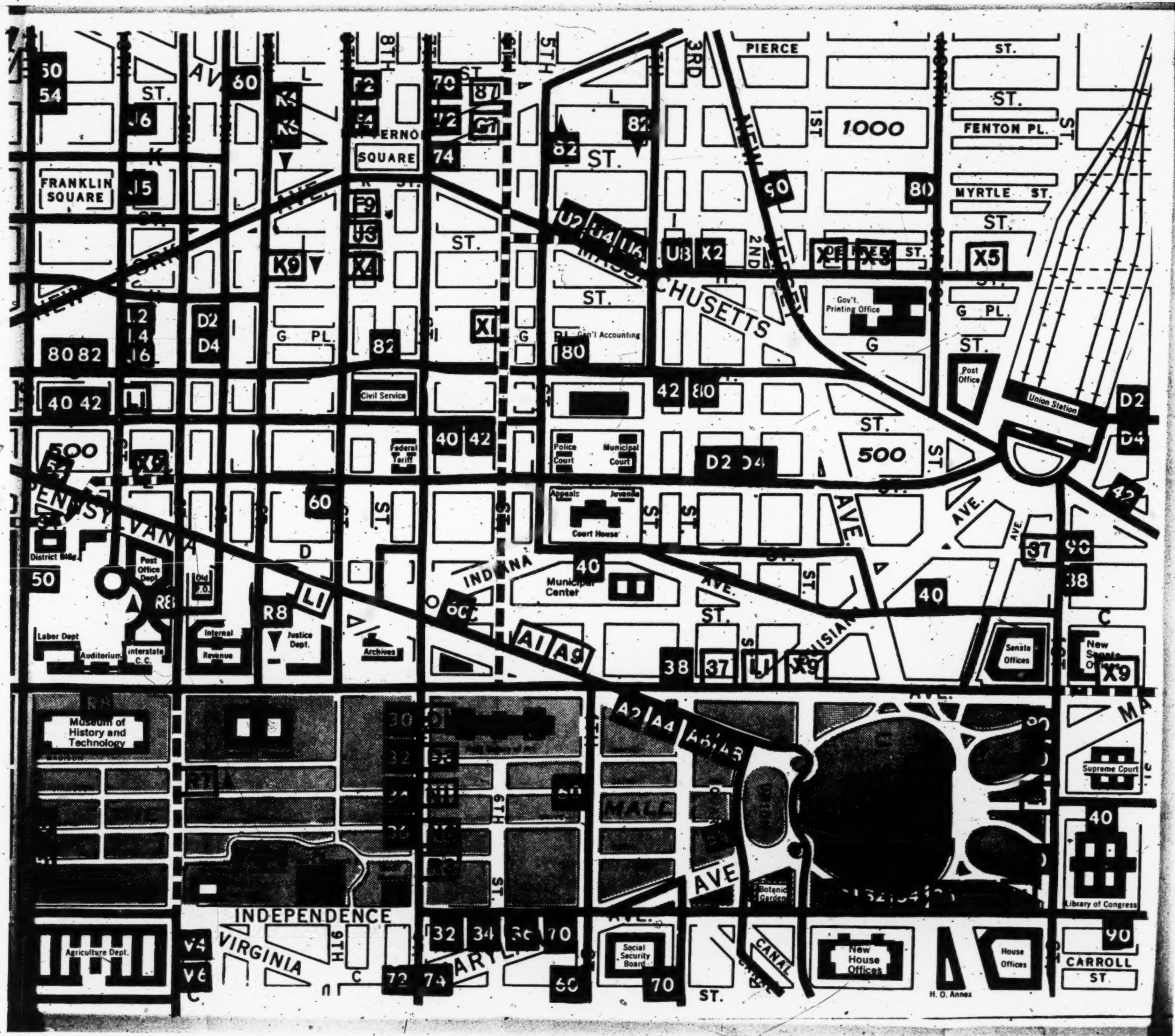
Regular Route Service In The Mall Area





ular Route Service Operating In The Mall Area







MINIBUS FLAG SERVICE SCHEDULE

EFFECTIVE NOVEMBER 1, 1965

Leave State Dept.	Pass 15th & N.Y. N.W.	Pass 1st & Constitution	Pass 14th & E.N.W.	Arrive State Dept.
9:24	9:33	9:53	10:13	10:24
9:36	9:45	10:05	10:25	10:36
9:48	9:57	10:17	10:37	10:48
10:00	10:09	10:29	10:49	11:00
10:12	10:21	10:41	11:01	11:12
10:24	10:33	10:53	11:13	11:24
10:36	10:45	11:05	11:25	11:36
10:48	10:57	11:17	11:37	11:48
11:00	11:09	11:29	11:49	12:00
11:12	11:21	11:41	12:01	12:12
11:24	11:33	11:53	12:13	12:24
11:36	11:45	12:05	12:25	12:36
11:48	11:57	12:17	12:37	12:48
12:00	12:09	12:29	12:49	1:00
12:12	12:21	12:41	1:01	1:12
12:24	12:33	12:53	1:13	1:24
12:36	12:45	12:57	1:25	1:36
12:48	12:57	1:17	1:37	1:48
1:00	1:09	1:29	1:49	2:00
1:12	1:21	1:41	2:01	2:12
1:24	1:33	1:53	2:13	2:24
1:36	1:45	2:05	2:25	2:36
1:48	1:57	2:17	2:37	2:48
2:00	2:09	2:29	2:49	3:00
2:12	2:21	2:41	3:01	3:12
2:24	2:33	2:53	3:13	3:24
2:36	2:45	3:05	3:25	3:36
2:48	2:57	3:17	3:37	3:48
3:00	3:09	3:30	3:51	4:01
3:12	3:21	3:42	4:03	4:13
3:24	3:33	3:54	4:15	4:25
3:36	3:45	4:06	4:27	4:37

EXHIBIT NO. 3

More New Service by D.C. Transit!



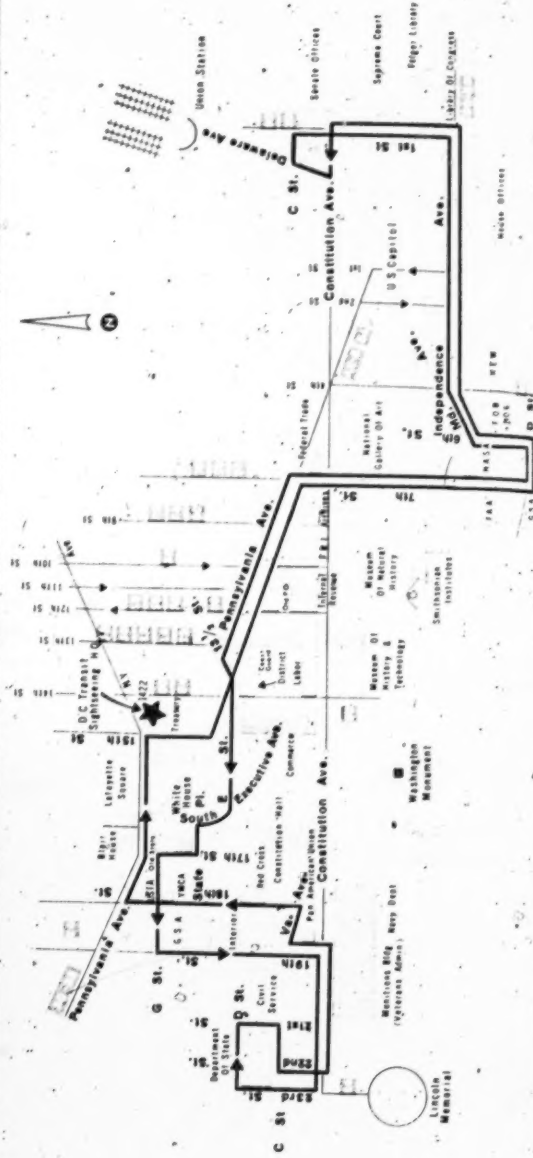
DIRECT TO 2111 S GOVERNMENT BUILDINGS

TAKE THE

Minibus

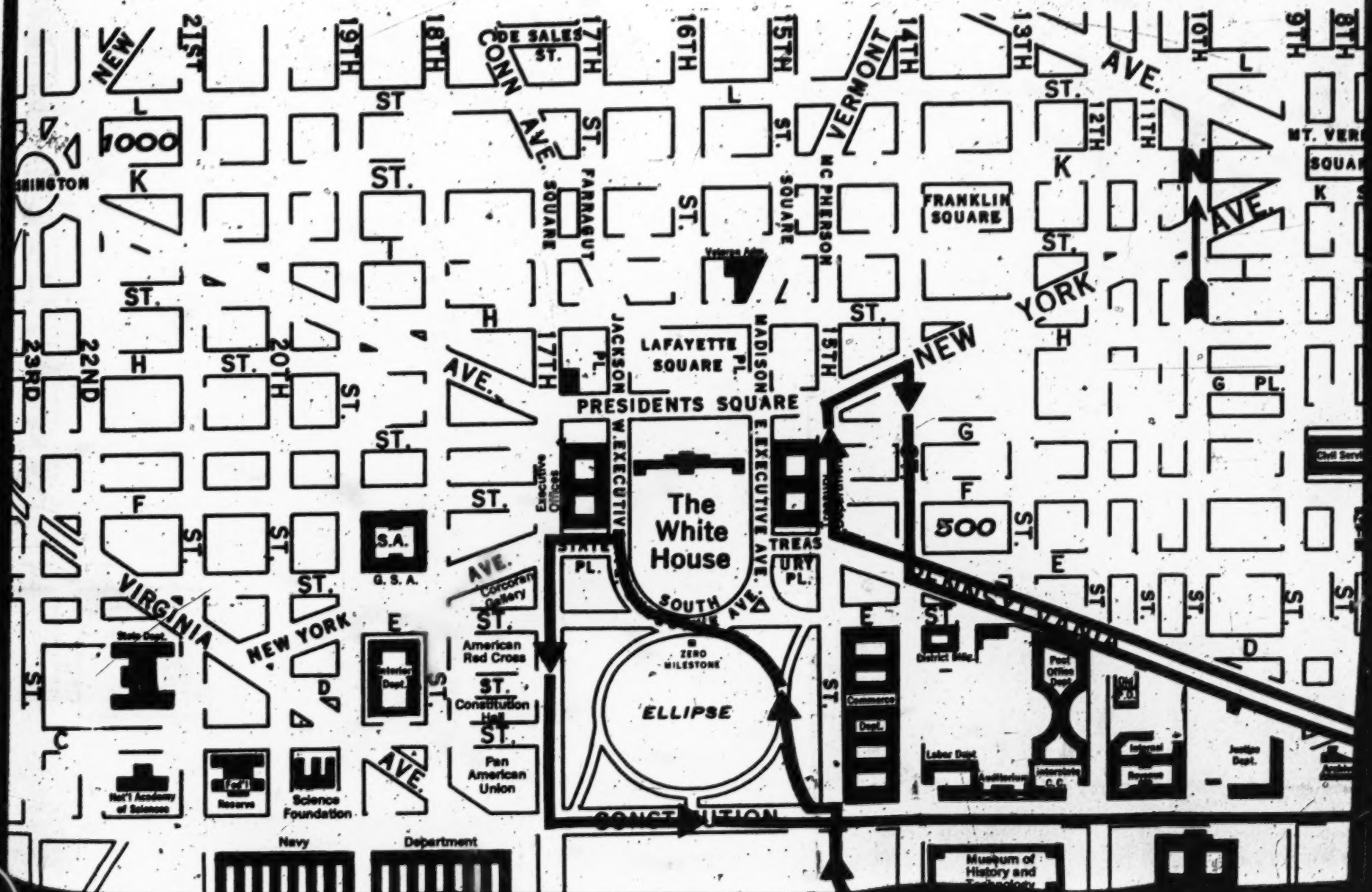
TO ANY OF THESE 31 GOVERNMENT BUILDINGS

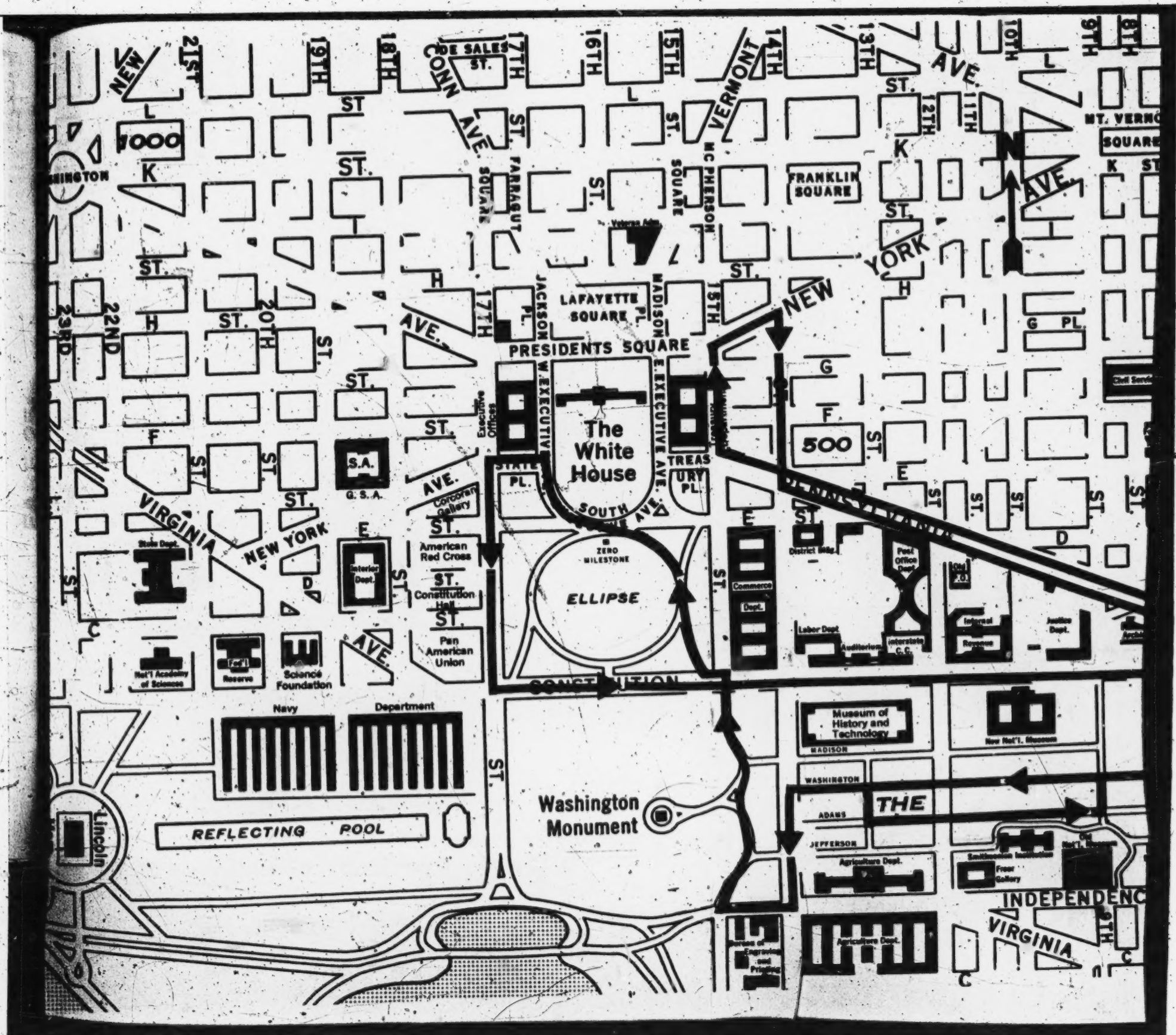
1. State Dept.
2. Munitions Bldg.
(Veterans Admin.)
3. Navy Dept.
4. Pan American Union
5. Civil Service Comm.
6. Interior Dept.
7. Constitution Hall (D.A.R.)
8. American Red Cross
9. General Services Admin.
10. U.S. Information Agency
11. White House
12. Treasury Dept.
13. Commerce Dept.
14. District Bldg.
15. Labor Dept.
16. U.S. Coast Guard
17. Post Office Dept.
(Ben Franklin Sta.)
18. Bureau of Internal Revenue
19. Justice Dept.
20. Archives Bldg.
21. Federal Trade Comm.
22. National Gallery of Art
23. Smithsonian Institution
24. Federal Aviation Agency
25. N.A.S.A.
26. Health, Education and
Welfare Dept.
27. House Office Buildings
28. Library of Congress
29. U.S. Capitol
30. Supreme Court Bldg.
31. U.S. Senate Office Buildings



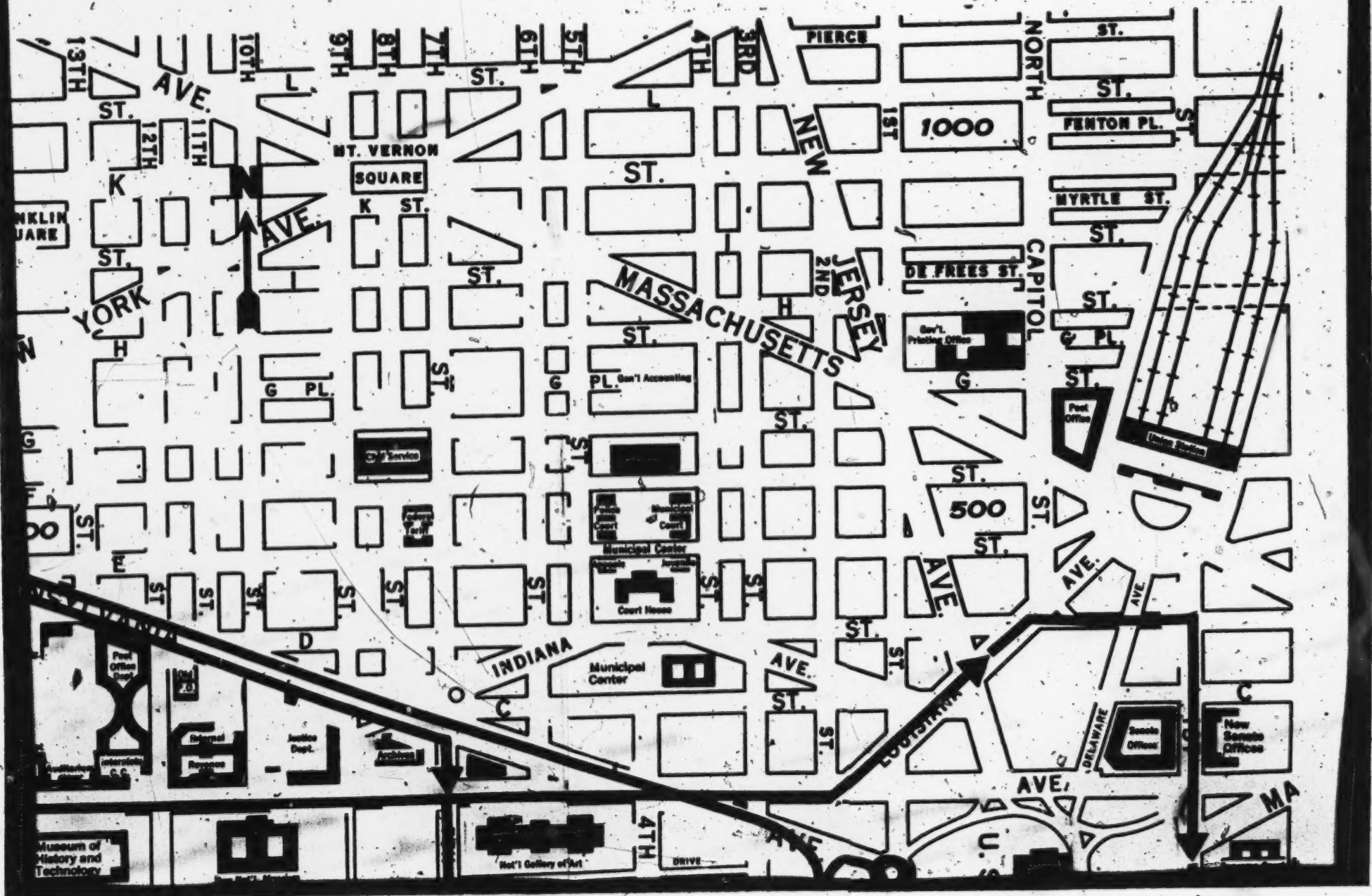
D.C. Transit System,
Scheduled Sightseeing
Operating In The Ma

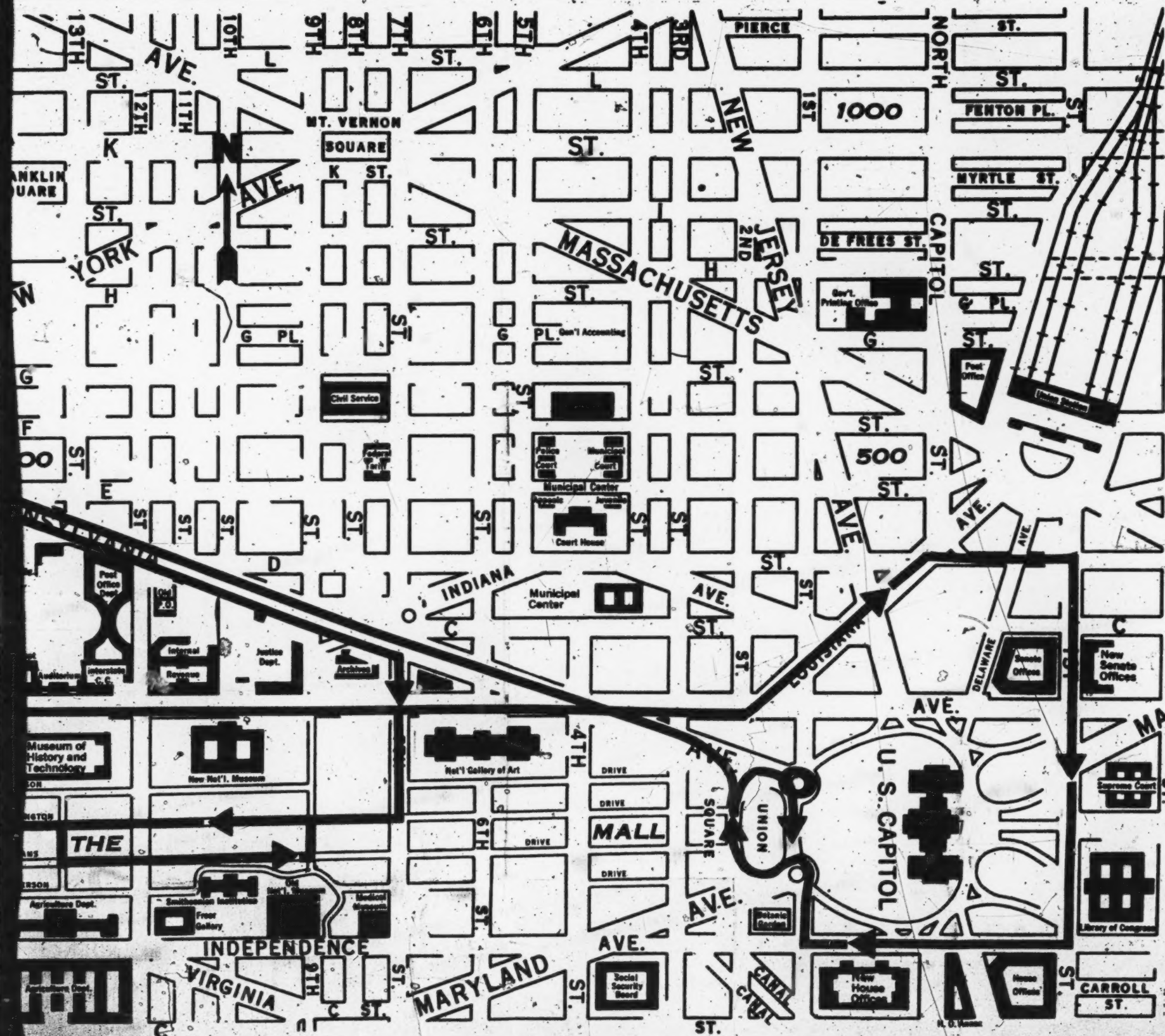
Tour No. 1





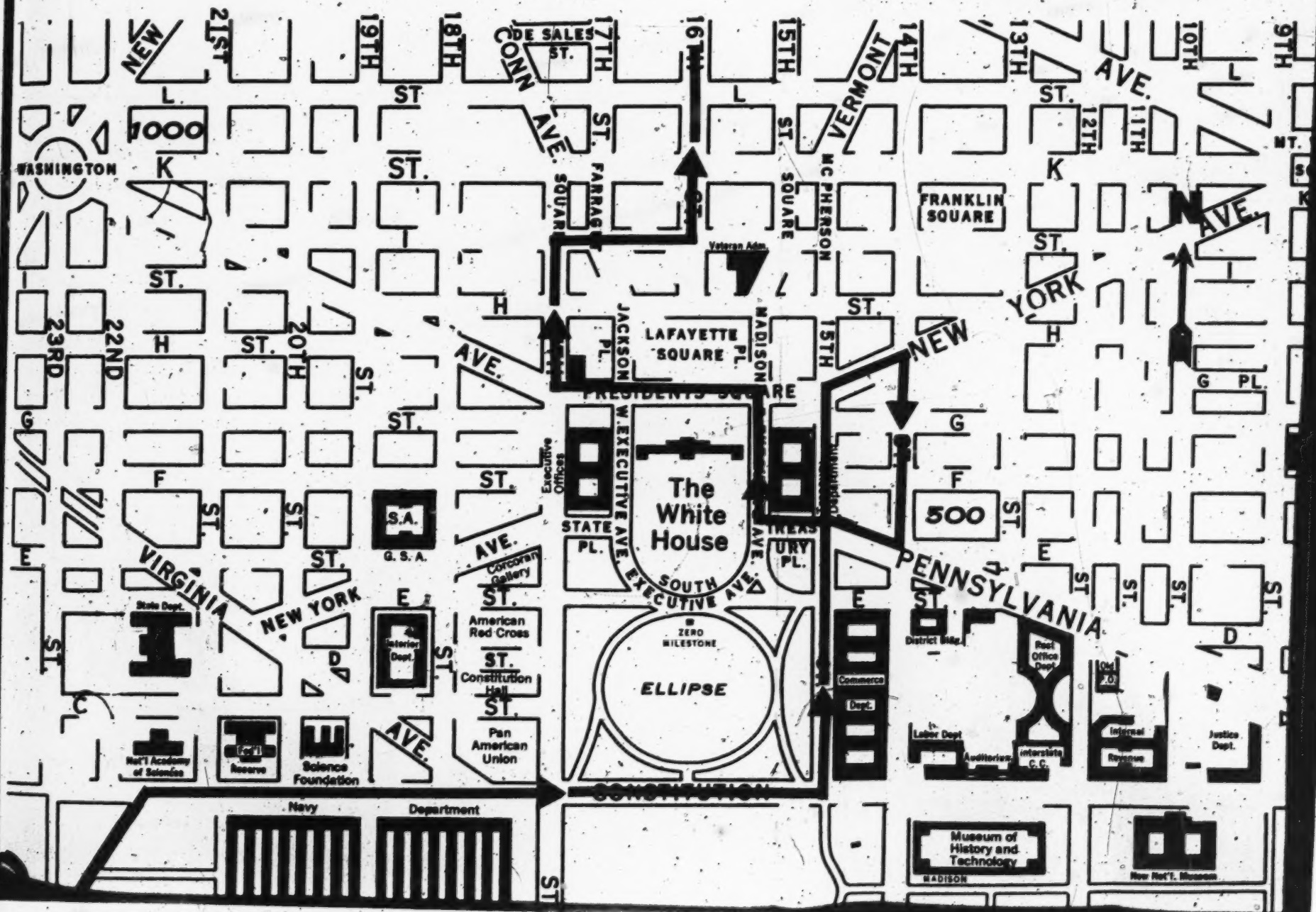
Tour No. 1

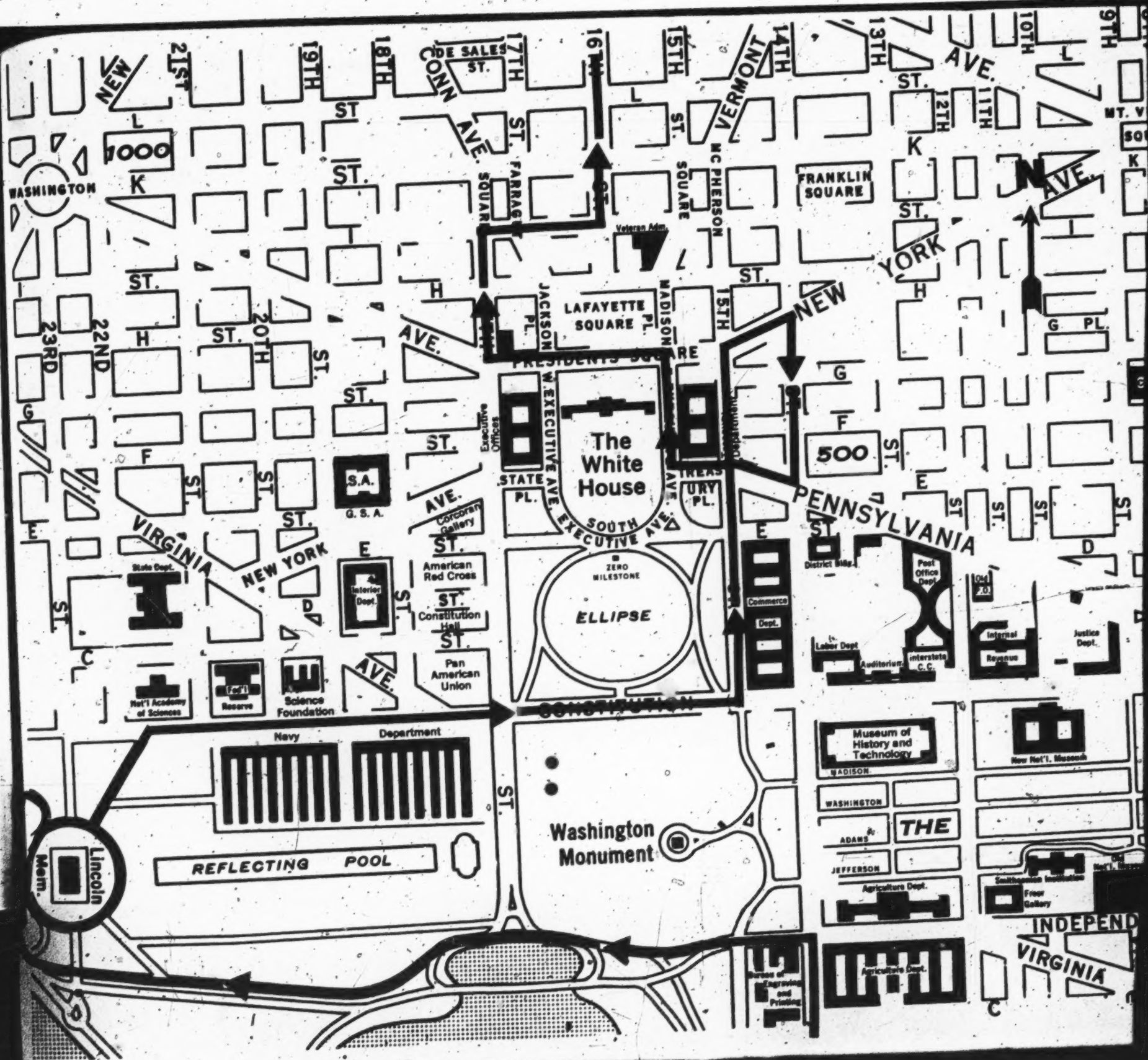




**D.C. Transit System,
Scheduled Sightseeing
Operating In The Mall**

Tour No. 2



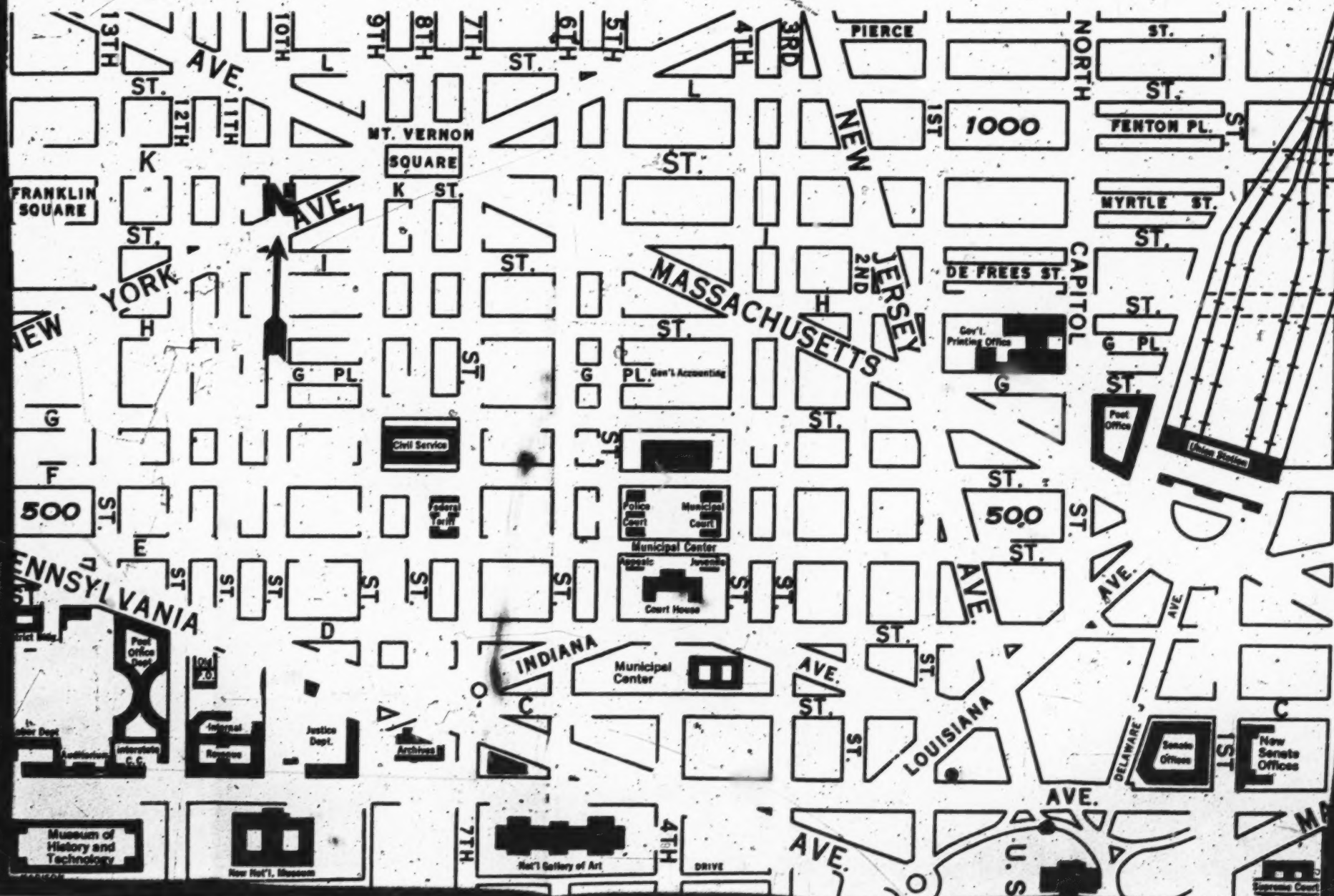


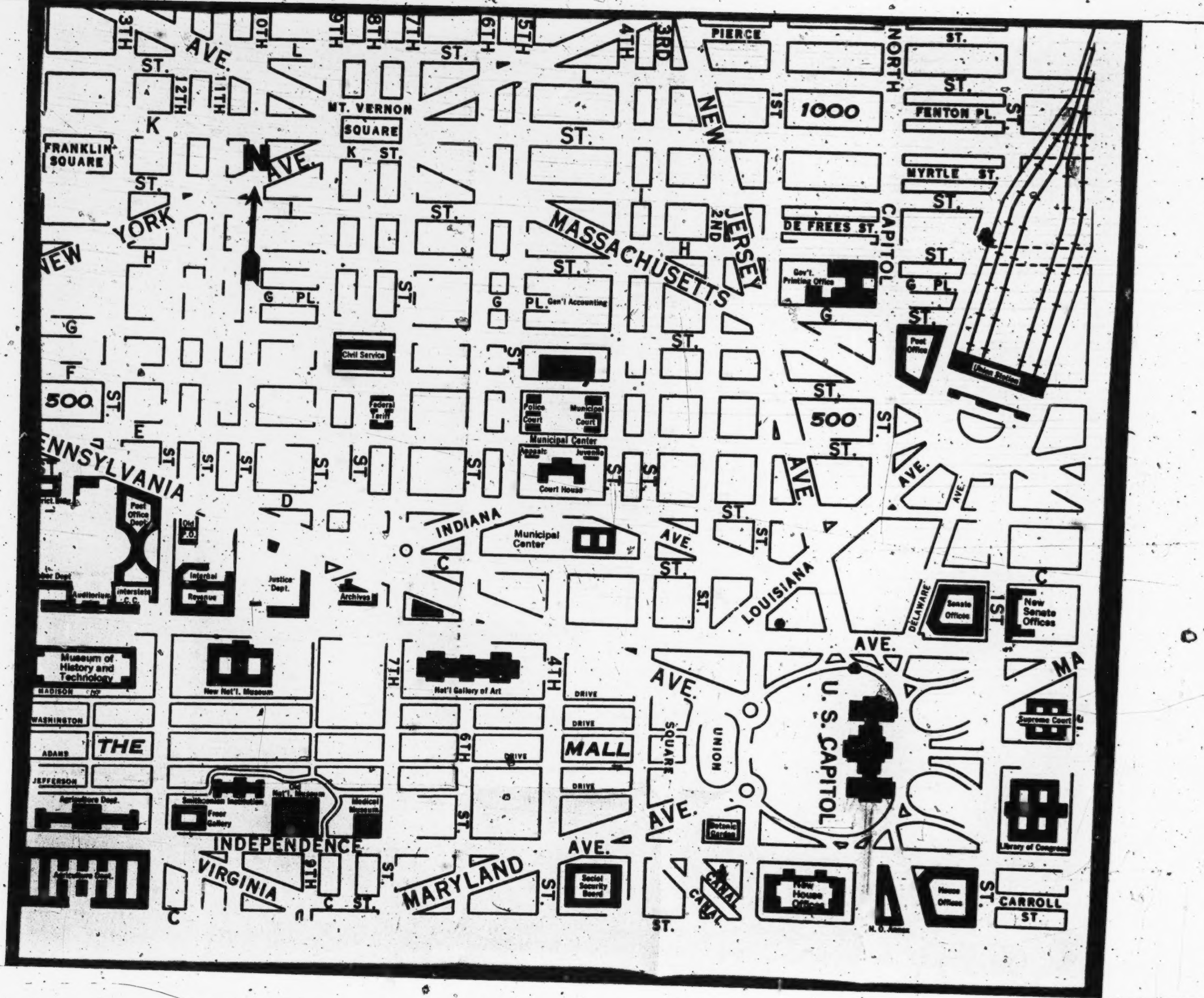
C. Transit System, Inc.

EXHIBIT NO. 5

uled Sightseeing Tours
ting In The Mall Area

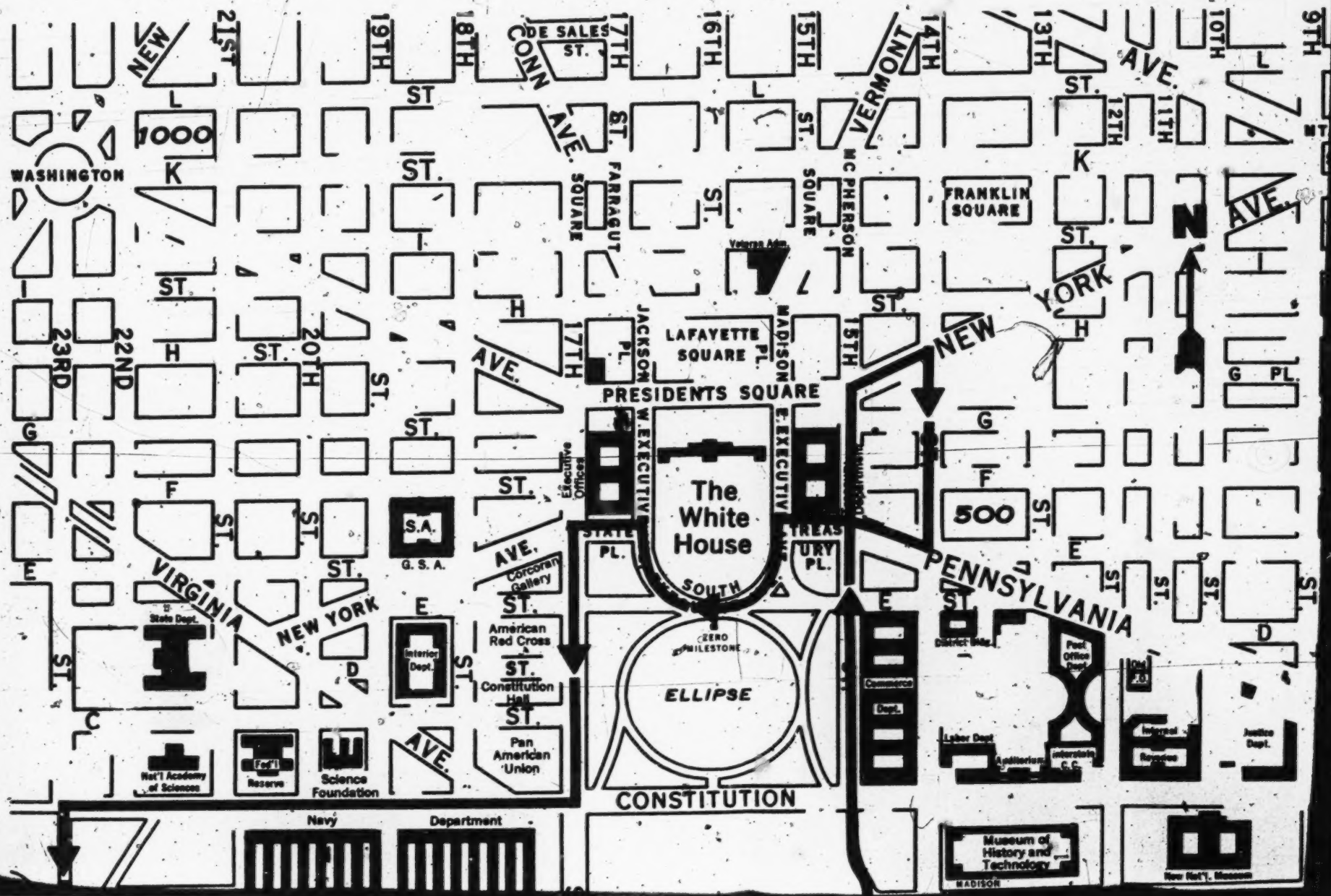
Tour No. 2

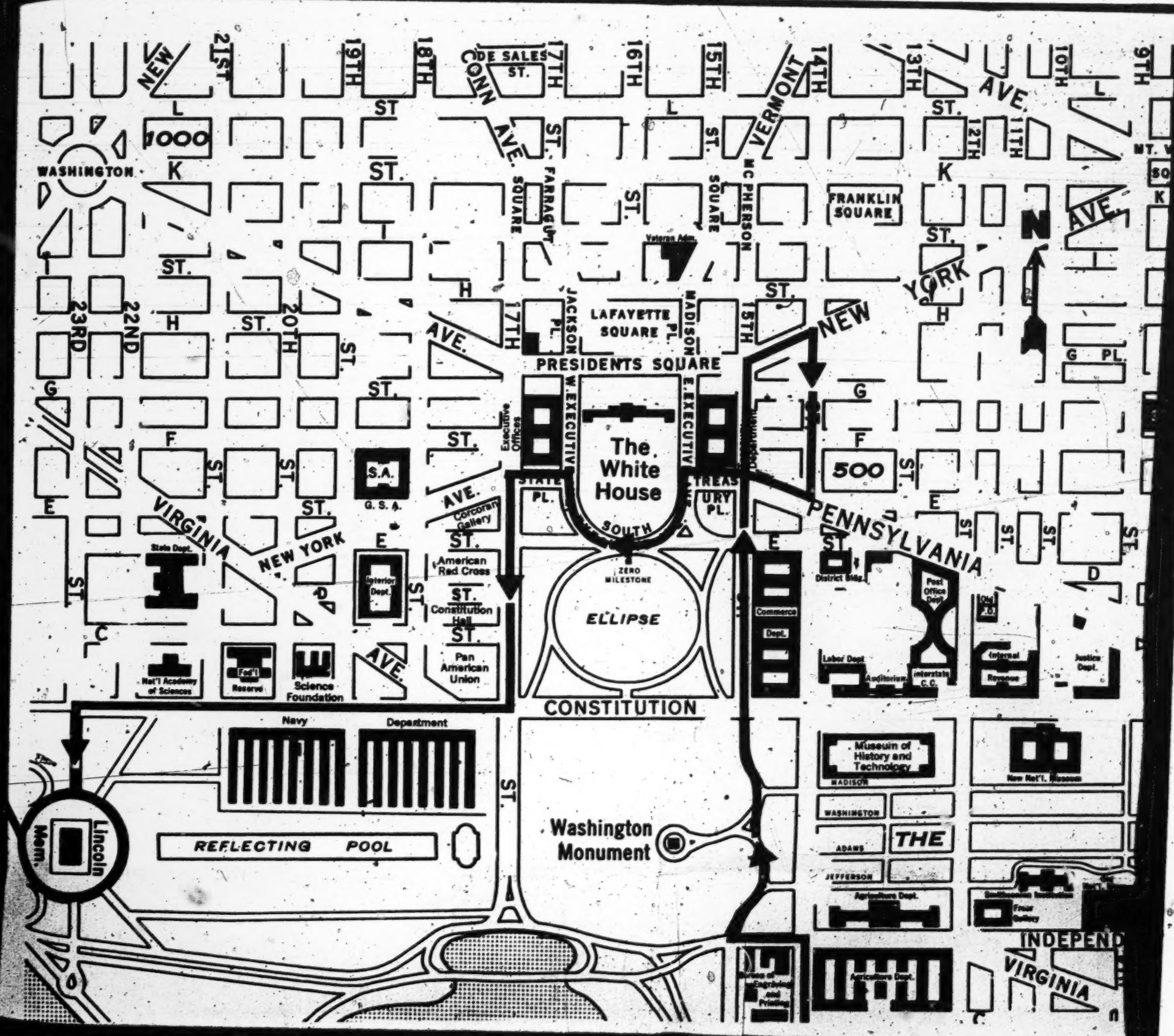




D.C. Transit System
Scheduled Sightseeing
Operating In The M

Tour No. 3





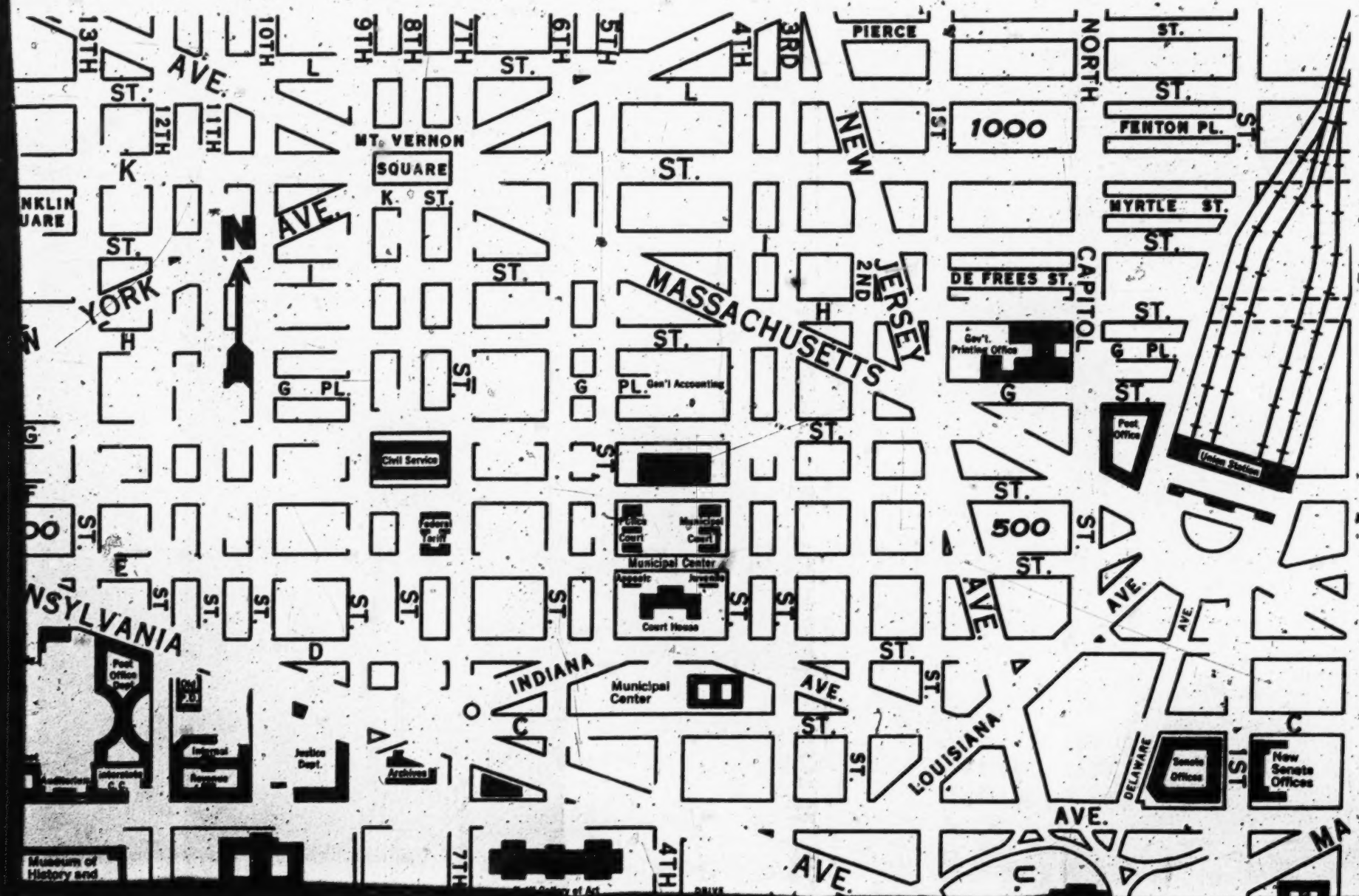
C. Transit System, Inc.

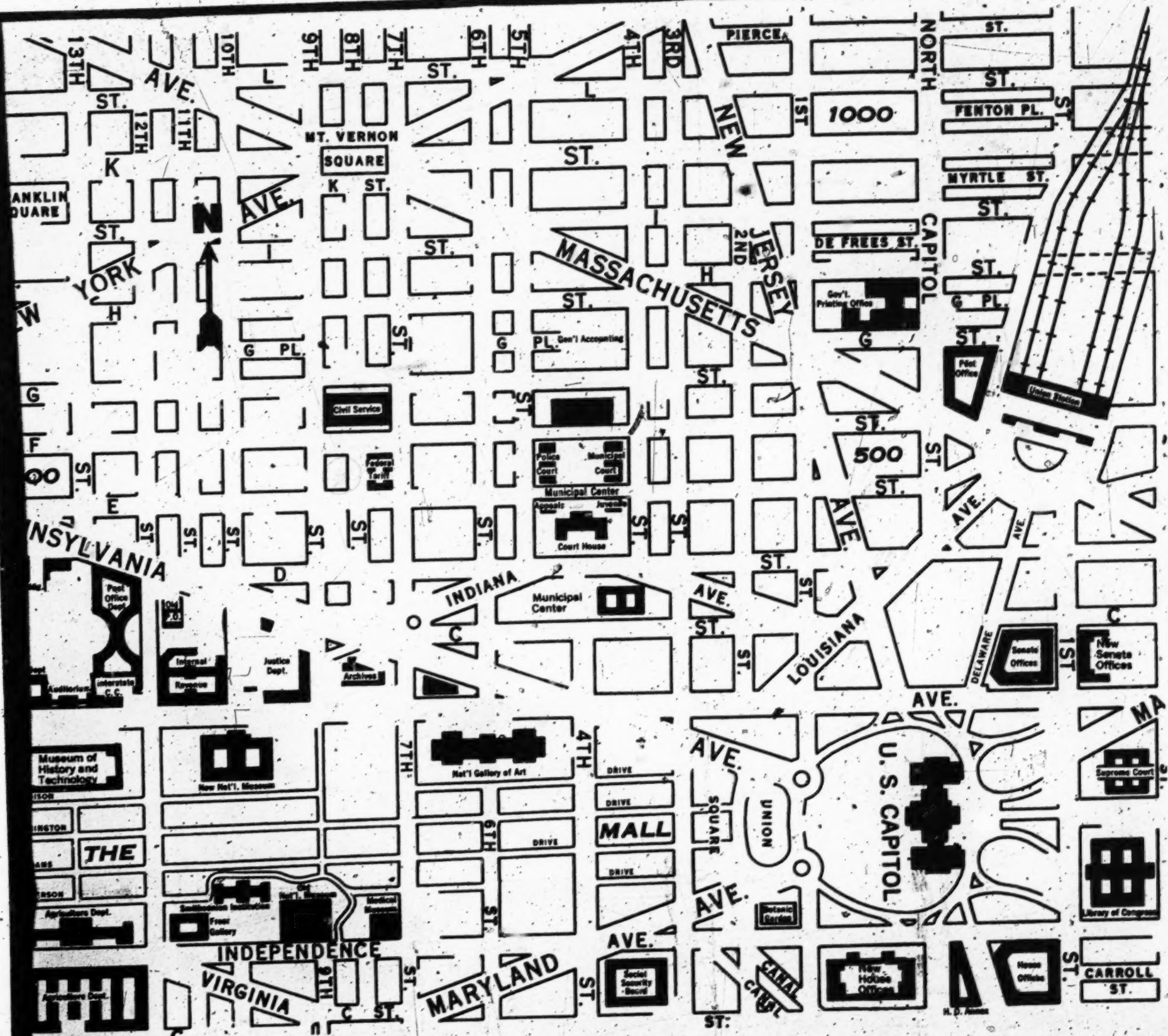
EXHIBIT NO. 6

uled Sightseeing Tours

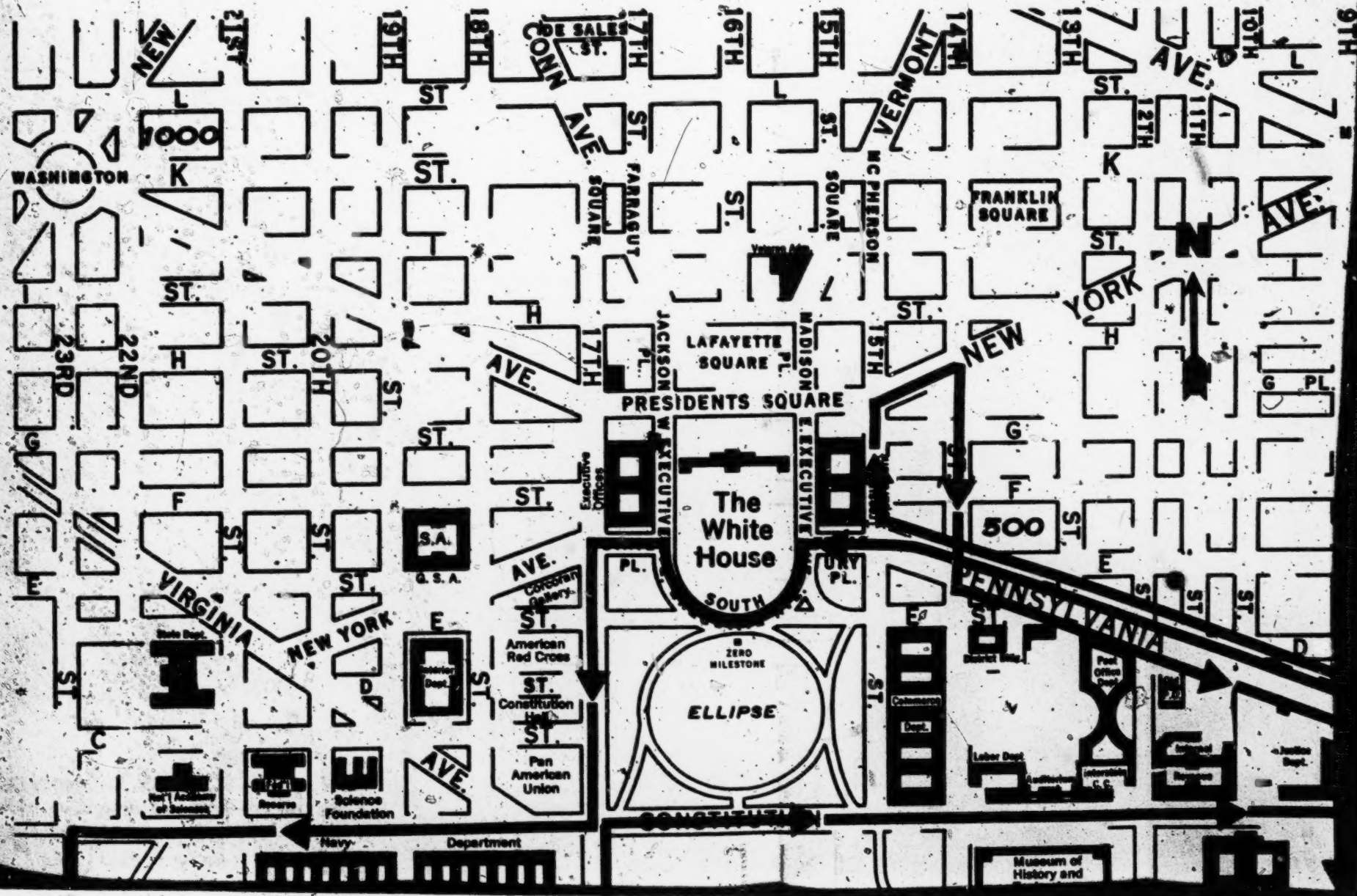
ating In The Mall Area

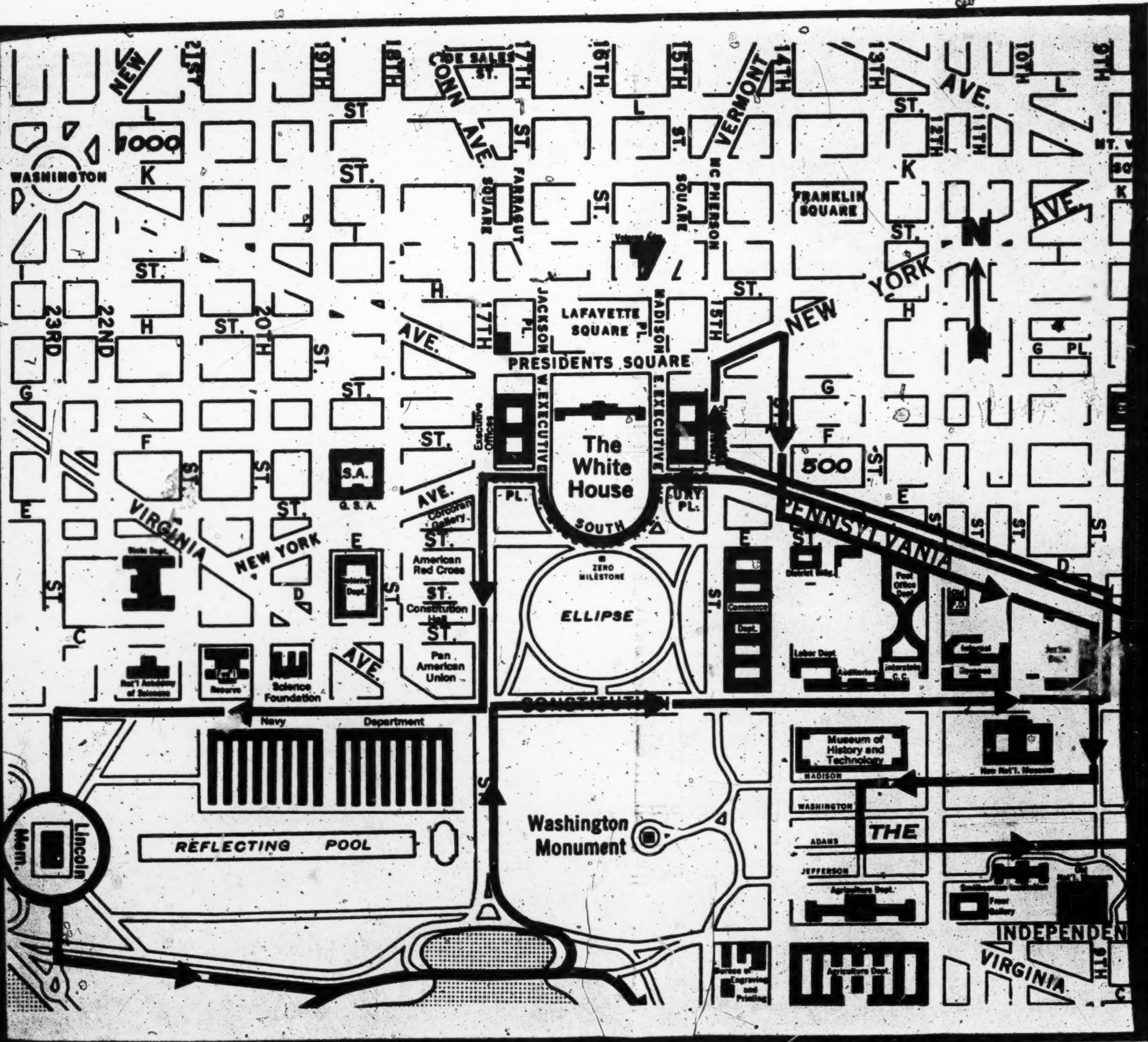
Tour No. 3





D.C. Transit System
Scheduled Sightseeing
Operating In The Mall
Tour No. 8

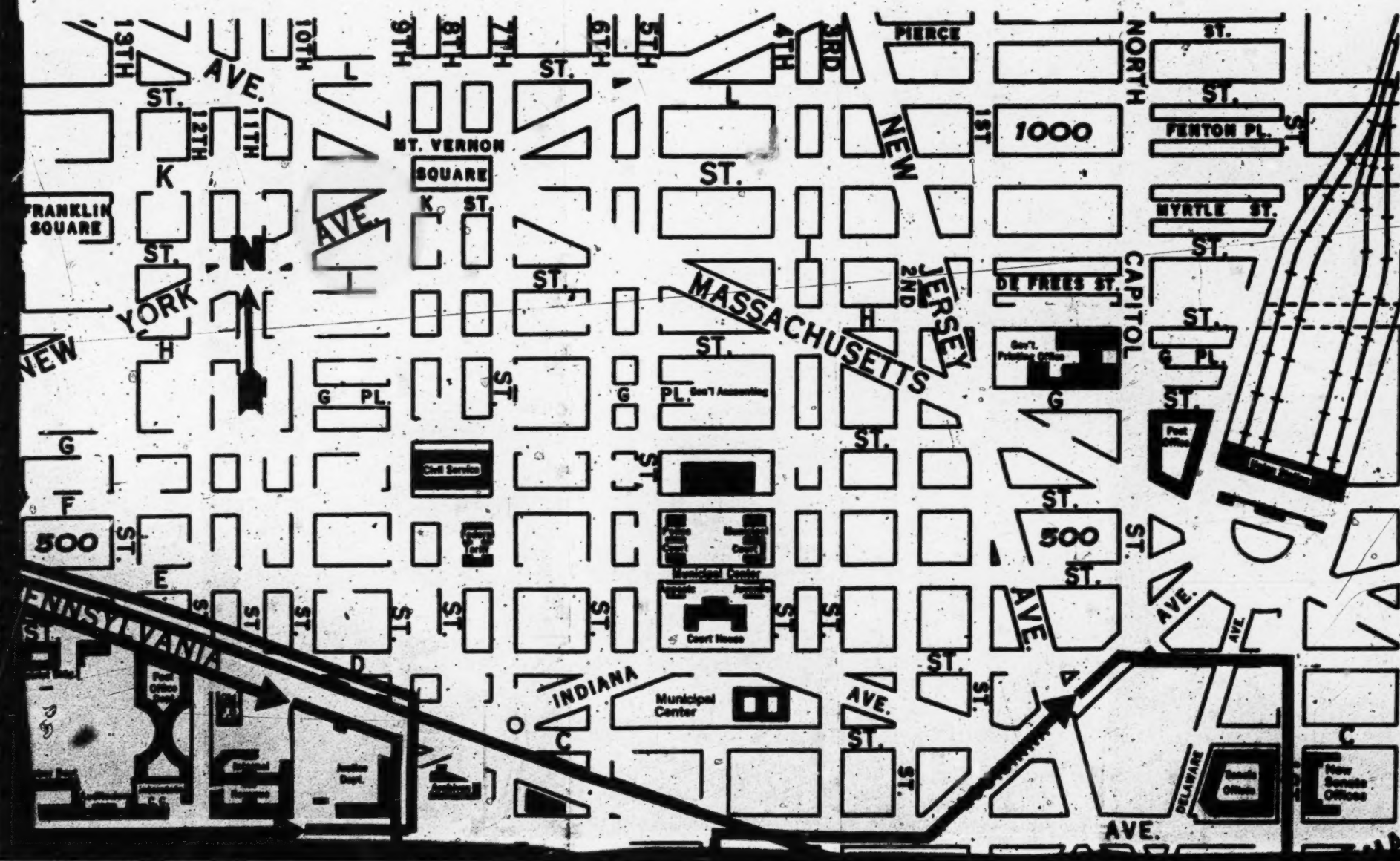


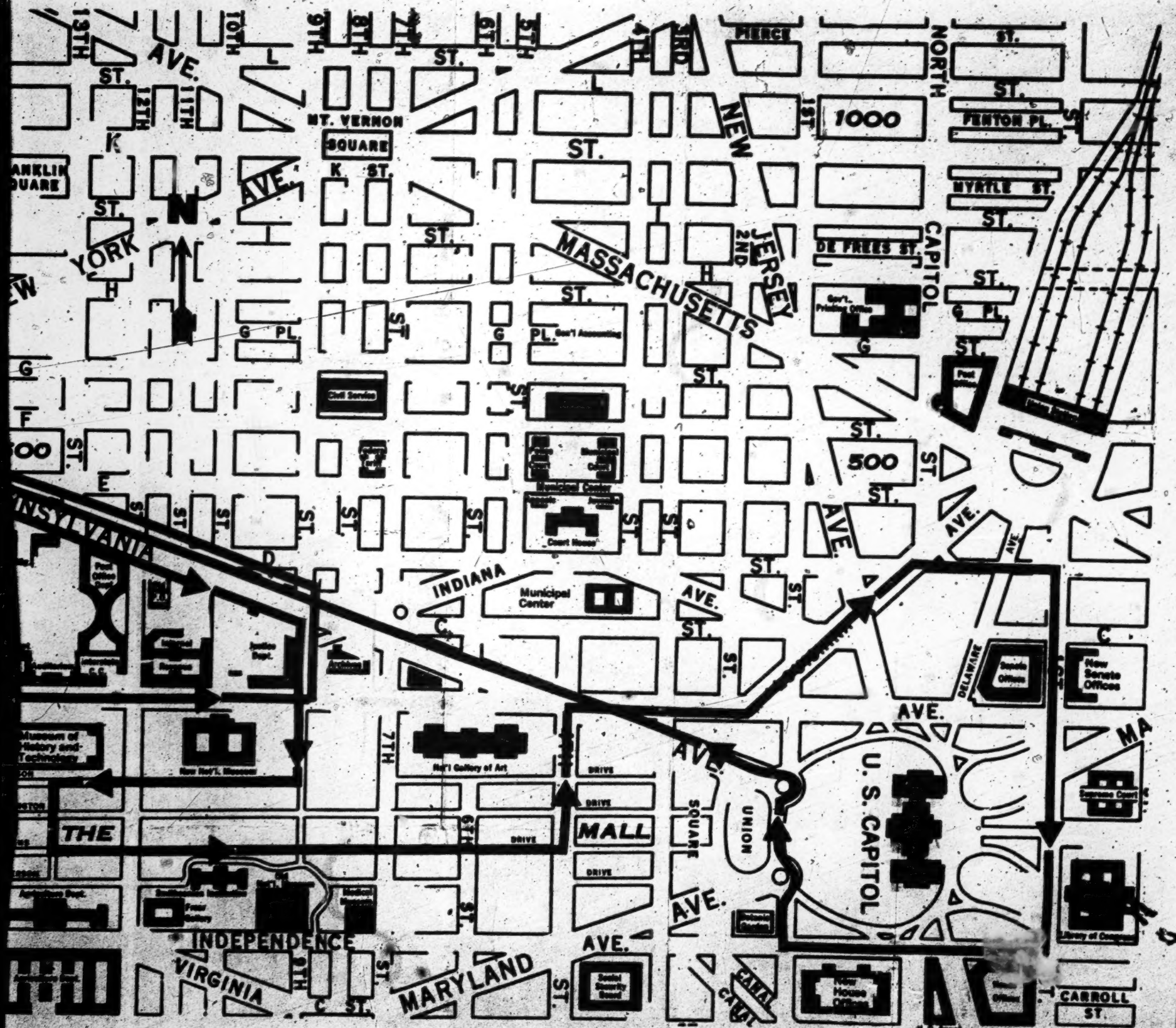


C. Transit System, Inc.

**uled Sightseeing Tour
ting In The Mall Area**

Tour No. 8





THREE-HOUR TOUR

Starting Points

UNION STATION

Take #90 bus marked "17th and Penna., S.E." to E. Capitol St. As you leave the bus straight ahead is

14th and PENNA., N.W.

Take #30 bus marked "17th and Penna., S.E.", #32 "Shipley Terrace", #34 "Naylor Gardens", #36 "Hillcrest" or #54 bus marked "Navy Yard" to New Jersey Ave. Cross Independence Ave. and walk straight ahead to

THE CAPITOL

The building is open from 9 a.m. to 4:30 p.m., including Sundays, or as long as either House is in session. Guided tours of the inside of the building start as soon as a group gathers from 9 a.m. to 3:45 p.m. The tour lasts about 40 minutes. The sessions of both Houses are open to the public. LEAVE THROUGH THE SAME DOORS YOU ENTERED. WALK STRAIGHT AHEAD ACROSS THE PARK. ON YOUR LEFT ACROSS THE STREET IS THE

U. S. SUPREME COURT

Don't spend more than 30 minutes if you are to stay within the time limits of your tour. The building is open from 9 a.m. to 4:30 p.m. weekdays, Saturdays until 12 noon. It is not open on Sundays or Holidays. Visitors are admitted to the court sessions. There is free guide service when court is not in session. LEAVE BY THE SAME DOOR YOU ENTERED. ON YOUR LEFT, ACROSS THE STREET, IS THE

THE LIBRARY OF CONGRESS

The building is open from 9 a.m. to 10 p.m. weekdays, Saturdays from 9 a.m. to 3:45 p.m. Sundays from 2 p.m. to 10 p.m. Go up front entrance steps to center lobby. To the extreme rear is an elevator. Take elevator to balcony of Library. Walk down to other floors. There is guide service when requested. Take 30 minutes in the building. LEAVE BY SAME WAY YOU ENTERED, GOING TO THE CORNER ON YOUR RIGHT. TURN RIGHT. WALK ONE BLOCK AND ON YOUR RIGHT IS THE

FOLGER LIBRARY

Exhibition rooms open from 11 a.m. to 4:30 p.m. every day except Sunday. Reading room open 9 a.m. to 4:30 p.m. every day except Sunday. Plan to spend

THREE MORE HOURS

From

UNION STATION

Take #38 bus marked "Rosslyn". Ask for transfer. Get off at 14th & Penna. Ave., N.W. Take #50 bus marked "Bureau of Engraving" to last stop, walk West.

14th and PENNA., N.W.

Take #50 bus marked "Bureau of Engraving" to last stop. Walk West to

FOLGER LIBRARY

At bus stop in front of building take #40 bus marked "Mt. Pleasant." Ask for a transfer. Get off at 14th and New York Ave., walk back one block. On your right on 14th St., take #50 bus marked "Bureau of Engraving" to last stop. Walk West to

THE BUREAU OF ENGRAVING

This building is open from 8 a.m. to 11 a.m. and from 12:30 p.m. to 2 p.m. Mondays through Fridays. It is closed on Saturdays and Sundays. Tours start at glass enclosed passageway at the head of the steps. The tours last about thirty minutes. GO OUT MAIN ENTRANCE. TURN LEFT. AFTER A SHORT WALK TO YOUR LEFT IS

WASHINGTON MONUMENT

It is open from 9 a.m. to 5 p.m. every day. Closed Christmas Day. An elevator will take you to the top. Tours start about every ten minutes. It takes about 20 minutes to see everything of interest. Look above the windows for maps of each section. AS YOU LEAVE FOLLOW THE WALK TO THE RIGHT STRAIGHT AHEAD. CROSS 14th ST. AND WALK DOWN JEFFERSON DRIVE TO

SMITHSONIAN INSTITUTION

The building is open every day from 9 a.m. to 4:30 p.m. There is no guide service. You could spend days in here. Only 45 minutes are allowed if you are to stay within your time limit. AS YOU LEAVE THE SMITHSONIAN INSTITUTION WALK DIRECTLY ACROSS THE MALL TO THE

NATIONAL MUSEUM
(Natural History Building)

The museum is open from 9 a.m. to 4:30 p.m., Mondays through Sundays. You could also spend days examining the

George Washington laid the north wing cornerstone in 1793. The building is 750 ft. long. The dome is of cast iron. It is topped by a 19-ft. Statue of Freedom. On the front portico, the incoming presidents take oath of office. The flags on the front and back of the Capitol are never lowered. A flag, if flying over either Senate or House wing, denotes that body in session.

Congress appropriated \$5,740,000 for this building. Of classic design, it is one of the most beautiful buildings in the country. The statues on each side of the front entrance are Law and Justice. Inside, the nine justices, appointed for life by the President, meet two weeks out of each month. They take their seats at 12 noon and sit as the highest Court of Appeals involving the Constitution and Federal Laws.

The Library of Congress, the world's largest building devoted mostly to library uses, comprises two city squares. The architecture is Italian Renaissance. Fifty masters of painting and sculpture worked together to make it a treasure house of the best contemporary American art. It shelters the greatest Library in the world. The building costs: \$7,868,951. The bronze fountain in front of the building represents the Court of Neptune.

The Folger Shakespeare Library was dedicated in April 1932. Its outside architecture is modern but in keeping with its surroundings. The interior is 17th Century England. It houses the finest collection of Shakespeare material in the world. On exhibit are many relics of the Elizabethan era and portraits of Shakespeare from the 17th to the 19th Century. In the East Wing of the Library is the Elizabethan Theatre. Its floor follows the theatres of Shakespeare's time. The famous and rarest print-

The Bureau of Engraving and Printing designs, engraves and prints all paper money, bonds, postage and U.S. Savings stamps, revenue stamps and other official documents. Approximately 5,200,000 currency notes with a face value of about \$20,000,000 are produced each day. In addition to the work that is printed from engraved plates, numerous items are produced on off-set and typographic printing presses. The Bureau was established in 1862. Originally occupying one room in the Treasury, it is now housed in two large buildings. The present main building was first occupied in 1914. An annex directly opposite was completed in 1938.

Washington Monument is 555½ ft. tall, shaped like an obelisk, weighs 81,120 tons and costs \$1,300,000. The base is 55 ft. square and rests on a foundation of concrete 126 ft. square and 36 ft. in depth. It tapers ¼ inch to the foot. It is entirely stable against winds up to 145 miles an hour. There are 262 separate stones in the monument. The capstone weighs 3300 lbs. and over it is a pyramid of pure aluminum that weighs only 100 ounces.

In 1828 James Smithson, an English scientist, who never saw America, bequeathed his fortune to found at Washington an establishment for "the increase and diffusion of knowledge among men." The building is of sandstone and is 447 by 180 feet. Among the thousands of exhibits is a complete airplane display.

The Natural History Building was completed in 1910 at a cost of \$3,500,000. In it are collections relating to anthropology, biology, and geology. Anthropology is represented by exhibits showing the life of the Indians and other native peoples of the earth; and thousands of specimens pertaining to archeology and ethnology. In biology, there are habitat groups of North American mammals, and famous birds.

...take oath of office. The flags on the front and back of the Capitol are lowered. A flag, if flying over either Senate or House wing, denotes that body in session.

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soon as a group gathers from 9 a.m. to 3:45 p.m. The tour lasts about 40 minutes. The sessions of both Houses are open to the public. **LEAVE THROUGH THE SAME DOORS YOU ENTERED. WALK STRAIGHT AHEAD ACROSS THE PARK. ON YOUR LEFT ACROSS THE STREET IS THE**

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FOLGER LIBRARY

Exhibition rooms open from 11 a.m. to 4:30 p.m. every day except Sunday. Reading room open 9 a.m. to 4:30 p.m. every day except Sunday. Plan to spend about 30 minutes in this building. **LEAVE BY THE FRONT ENTRANCE**

FOR

FOR

14th and PENNA., N.W.

Turn left, walk down 2nd St., S.E. to Penna. Ave. and take #30 bus marked "Friendship Heights" or #54 bus marked "14th and Colorado." Either passes 14th and Penna. Ave., N.W.

UNION STATION

Walk straight ahead along E. Capitol to 1st St. Take #90 bus marked "Calvert Bridge," to Union Station.

The Bureau of Engraving and Printing designs, engraves and prints all paper money, bonds, postage and U.S. Savings stamps, revenue stamps and other official documents. Approximately 5,200,000 currency notes with a face value of about \$20,000,000 are produced each day. In addition to the work that is printed from engraved plates, numerous items are produced on off-set and typographic printing presses. The Bureau was established in 1862. Originally occupying one room in the Treasury, it is now housed in two large buildings. The present main building was first occupied in 1914. An annex directly opposite was completed in 1938.

Washington Monument is 555 1/2 ft. tall, shaped like an obelisk, weighs 81,120 tons, and costs \$1,300,000. The base is 55 ft. square and rests on a foundation of concrete 126 ft. square and 36 ft. in depth. It tapers 1/2 inch to the foot. It is entirely stable against winds up to 145 miles an hour. There are 282 separate stones in the monument. The capstone weighs 3300 lbs. and over it is a pyramid of pure diamond that weighs only 100 ounces.

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WALK WEST 30

THE BUREAU OF ENGRAVING

This building is open from 8 a.m. to 11 a.m. and from 12:30 p.m. to 2 p.m. Mondays through Fridays. It is closed on Saturdays and Sundays. Tours start at glass enclosed passageway at the head of the steps. The tours last about thirty minutes. **GO OUT MAIN ENTRANCE. TURN LEFT. AFTER A SHORT WALK TO YOUR LEFT IS**

WASHINGTON MONUMENT

It is open from 9 a.m. to 5 p.m. every day. Closed Christmas Day. An elevator will take you to the top. Tours start about every ten minutes. It takes about 20 minutes to see everything of interest. Look above the windows for maps of each section. **AS YOU LEAVE FOLLOW THE WALK TO THE RIGHT. STRAIGHT AHEAD. CROSS 14th ST. AND WALK DOWN JEFFERSON DRIVE TO**

SMITHSONIAN INSTITUTION

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NATIONAL MUSEUM (Natural History Building)

The museum is open from 9 a.m. to 4:30 p.m., Mondays through Sundays. You could also spend days examining the exhibits. To stay within your time limit only 30 minutes are allowed. **LEAVE THRU THE 10TH ST. ENTRANCE.**

FOR

FOR

14th and PENNA., N.W.

Walk left to 10th St. & Penna. Ave. Take #38 bus marked "Rosslyn," or #30 marked "Friendship Heights" or #54 bus marked "14th and Colorado" to 14th and Penna. Ave., N.W.

UNION STATION

Walk left up 10th St. to Penna. Ave. Take #38 bus marked "Union Station."

Cadillac Limousine Service with Uniformed Chauffeur

THREE-HOUR TOUR

Starting Points

UNION STATION

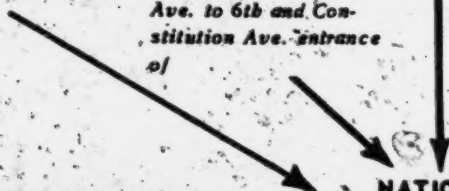
Take #38 bus marked "Rosslyn" to 6th and Penna. Ave. N.W. Walk across Penna. Ave. to 6th and Constitution Ave. entrance of

14th and PENNA., N.W.

Take #38 bus marked "Union Station" or #54 bus marked "Navy Yard" to 6th and Penna. Ave. N.W. Cross Penna. Ave. to 6th and Constitution Ave. entrance of

NATURAL HISTORY MUSEUM

Go out Constitution Ave. entrance. Turn right. A short walk and to your right is



NATIONAL GALLERY OF ART

Open from 10 a.m. to 5 p.m. Mondays through Saturdays. On Sundays, the hours are from 2 p.m. to 10 p.m. Spend about 40 minutes here. LEAVE BY FRONT ENTRANCE. DIRECTLY ACROSS THE STREET TO YOUR LEFT IS THE REAR ENTRANCE TO THE

ARCHIVES BUILDING

This building is open from 8:45 a.m. to 5:15 p.m., Monday thru Saturday. On Sundays and Holidays, it is open from 1:30 p.m. to 5 p.m. Spend about 35 minutes here. LEAVE BY THE FRONT ENTRANCE. TURN LEFT. WALK ACROSS 9TH ST., ON PENNA. AVE. TO THE CORNER ENTRANCE OF THE

DEPARTMENT OF JUSTICE

Open from 9:50 a.m. to 4 p.m., Mondays through Fridays only. TAKE ELEVATOR TO FIFTH FLOOR. Arrow will point to room where you arrange for the FBI tour lasting approximately one hour and fifteen minutes. DEPART BY THE 9TH ST. DOOR. AT YOUR LEFT IS PENNA. AVE.

This great repository of art treasures was the gift of Andrew W. Mellon, distinguished statesman and philanthropist. A Joint Resolution of Congress on March 24, 1937, established the National Gallery of Art. It is on the site of the city's first railway station. Among the many works of art contained in this gallery are the "Alba Madonna" by Raphael, "Self-Portrait" by Rembrandt, Donatello's "David of the Casa Martelli" and "Venus Anadyomene," created by Sansovino about 1590. Special exhibits are featured periodically. Many great private gifts have been made to the National Gallery including the Kress, Widener, Chester Dale, and Rosenwald Collections.

The National Archives Building is one of the most impressive and majestic in Washington. It is a fine example of pure classic style. Here are housed the valuable records of the Federal Government. Most of these records are available for use in the central research rooms, which are decorated in early Italian Renaissance. Historic documents, such as The Declaration of Independence, the Constitution, the Bill of Rights, and the Emancipation Proclamation are on display in the Exhibition Hall. The National Archives was established in 1934 to provide for the safe and orderly keeping of public documents, and the building was opened in November 1935. It presents a beautiful display of Corinthian columns and porticos, and is adorned with sculptures representing many allegorical themes.

The Department of Justice building costs \$10,000,000. It was finished in October, 1934, and occupies a city block. A central court is beautifully landscaped. The exterior is decorated with colonnades and the entrances with symbolic designs. The Laboratory contains an impressive display of weapons

THREE MORE HOURS

From

UNION STATION

Take a #D2 or D4 bus marked "Glover Park" or "MacArthur Blvd." in 10th and E Sts., N.W. Get off and walk to your right on 10th St. to

14th and PENNA., N.W.

Walk up 14th St. to F St. Take #40 or #42 bus marked "Lincoln Park" or "13th & D Sts., N.E." Get off at 11th and F Sts., N.W. Walk straight ahead to 10th St. Turn right on 10th St. to

DEPARTMENT OF JUSTICE

Cross Penna. Ave. and walk up 9th St. to E St. Walk one block to your left to 10th St. and then right to

LINCOLN MUSEUM

Little remains of the interior of Ford's Theatre as it was when Lincoln was assassinated, but this museum offers one of the best collection of Lincolniana on exhibit anywhere. You will see the flag that was draped in front of the President's box and the spur of John Wilkes Booth, both of which were involved in breaking the actor's leg as he jumped from the box to the stage.

After Lincoln was shot in Ford's Theatre he was carried across the street to the home of William Petersen, a tailor. There he died on the following morning. In 1896, the property was bought by the United States Government. The wall-paper, bed, pictures and other objects in the room where Lincoln died resemble the originals. Other rooms in the house have interesting mementoes of the Civil War days.

The Commerce Building was opened in 1932. It is designed after the Italian Renaissance style. It houses the Bureau and Offices of the Department of Commerce including the Secretary and his staff, the Civil Aeronautics Administration, the Coast and Geodetic Survey, the Bureau of Foreign and Domestic Commerce, and the Patent Office. Other Bureaus of the Department not in the Commerce Building are the National Bureau of Standards located at Connecticut Avenue and Upton St., N.W.; the Weather Bureau located at Twenty-fourth and M Sts., N.W.; and the Bureau of the Census located at Suitland, Md. Located in the basement is an Aquarium, containing an outstanding collection of fresh-water fish in 50 tanks and pools.

Of striking beauty, this gleaming white marble building was constructed at a cost of \$1,100,000 to promote commerce and friendship between North and South America. The building very skillfully blends North and South American styles of architecture. At the main entrance the marble sculpture, representing North and South American merchants, is a masterpiece.

This building is open from 9 a.m. to 9 p.m. Mondays through Saturdays and from 12:30 p.m. to 9 p.m. on Sundays. It will take you about 30 minutes to see this museum. **AS YOU LEAVE ACROSS THE STREET IS THE**

PETERSEN HOUSE

Open from 9 a.m. to 5:30 p.m. Mondays through Saturdays. On Sunday it is open from 12:30 to 5:30 p.m. Spend about 30 minutes here. **WHEN YOU LEAVE THE PETERSEN HOUSE, WALK LEFT TO F ST., TAKE #40 OR #42 BUS MARKED "Mt. Pleasant." ASK FOR A TRANSFER. GET OFF AT 14TH AND NEW YORK AVE., THEN WALK BACK ONE BLOCK TO G ST. CROSS 14TH ST. AND TAKE #50 BUS MARKED "Bureau of Engraving." GET OFF AT CONSTITUTION AVE. AHEAD OF YOU IS THE**

DEPT. OF COMMERCE

Open from 8:30 a.m. to 5 p.m. Mondays through Fridays. The Aquarium is open to the public on Saturdays and Sundays from 9 a.m. to 4:30 p.m. Spend about 40 minutes here. **LEAVE BY THE SAME WAY YOU CAME IN. TAKE #50 BUS MARKED "14th and Colorado." ASK FOR A TRANSFER. GET OFF AT 14TH AND NEW YORK AVE., N.W., AND WALK BACK ONE BLOCK TO G ST., TAKE #82 BUS MARKED "Potomac Park." ON G ST. TO THE END OF THE LINE. WALK ONE BLOCK AHEAD TO 17TH ST. ON CORNER YOUR RIGHT IS THE**

PAN AMERICAN UNION BUILDING

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NATIONAL GALLERY OF ART

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FOR

FOR

UNION STATION

Take #38 bus marked "Union Station" at 9th and Penna. Ave. direct to Union Station.

14th and PENNA., N.W.

Take #38 bus marked "Rosslyn" or #30 bus marked "Friendship Heights" direct to 14th and Penna. Ave., N.W.

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This building is open from 9 a.m. to 9 p.m. Mondays through Saturdays and from 12:30 p.m. to 9 p.m. on Sundays. It will take you about 30 minutes to see this museum. **AS YOU LEAVE ACROSS THE STREET IS THE**

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PAN AMERICAN UNION BUILDING

Open from 9 a.m. to 4:30 p.m. Mondays through Fridays, and from 9 a.m. to 12 noon on Saturdays. Closed Sundays. You can stay here approximately 30 minutes. **WHEN YOU LEAVE THIS BUILDING, RETRACE YOUR STEPS TO 18TH AND C STS., N.W.**

UNION STATION

Take #82 bus marked "Riverdale," "Mt. Rainier," or "Hollywood." Ask for a transfer. Get off at 15th St. and New York Ave., N.W. Take #38 bus marked "Union Station."

FOR

14th and PENNA., N.W.

Take #82 bus marked "Riverdale," "Mt. Rainier," or "Hollywood." Get off at 14th and G Sts., N.W. and walk down two blocks to Penna. Ave.

THREE-HOUR TOUR

Starting Points

UNION STATION

Take #38 bus marked "Rosslyn". Get off at 17th & Penna. Ave. W. Cross Penna. Ave. and continue down 17th St. one block to

14th and PENNA., N.W.

Take #38 bus marked "Rosslyn," or #30 marked "Friendship Heights." Get off at 17th & Penna. Ave., N.W. Cross Penna. Ave. and continue down 17th St. one block to

PAN AMERICAN BUILDING

Leave by same entrance you came in. Turn left and walk two blocks. On your left is

CORCORAN ART GALLERY

Open on Tuesdays through Fridays, 10 a.m. to 4:30 p.m., Saturdays 9 a.m. to 4:30 p.m., and Sundays and Holidays, 2 p.m. to 5 p.m. The building is closed on Christmas Day and July 4. This tour will permit your stay here about 1 hour. LEAVE BY MAIN ENTRANCE. TURN LEFT AND WALK AHEAD TWO BLOCKS TO PENNA. AVE. TURN RIGHT TO W. EXECUTIVE AVE. AHEAD OF YOU IS THE

WHITE HOUSE

The Executive Mansion is open from 10 a.m. - 12 noon each day. Tuesdays through Saturdays. Closed Sundays, Mondays and Holidays. Walk across Lafayette Park to Conn. Ave. & H St. N.W. Take #R-4* BUS MARKED "Potomac Park," WHICH PASSES THE

*Does not operate on Sundays.

LINCOLN MEMORIAL

The Memorial is open every day between the hours of 9 a.m. and 9 p.m. Spend 30 minutes here.

FOR

FOR

Corcoran Gallery of Art built of white Georgia marble and pink Maine granite. It is a distinguished example of 19th Century neoclassic architecture. The collection was given to the nation in 1869 by William Wilson Corcoran, a wealthy citizen of Washington. The Corcoran Collection is outstanding in American painting and sculpture, and has notable examples of 19th century French painting and bronzes. A collection of the late Senator William C. C. Clark includes fine examples of Italian, Dutch, French, and English painting, Persian rugs, marble, Delft and Palissy ware, bronzes and Greek and Roman antiquities.

The Executive Mansion is the dwelling of the President and his family. It was rebuilt in 1815, after it was burned by the British. Its walls are of Virginia gray granite painted white. The lower floor contains the White House. The Green Room, the Blue Room, the Red Room, and the State Dining Room. The rooms displayed portraits of former Presidents who have occupied the mansion. The upper floors contain the bedroom suites, study, library, and the study of the President. The grounds consist of some 18 acres.

The cornerstone of the Lincoln Memorial was laid on January 12, 1915, and the dedication took place on May 30, seven years later. The structure is designed in the Greek temple form, costs about \$2,940,000. Reached by a long flight of marble steps, the Lincoln Memorial presents a stately front with its 36 columns representing the States in Union when Lincoln died. The super structure of white Colorado marble. The main chamber is 60' x 70' and is 45' high. The statue of Lincoln was the work of sculptor Chester French. It is one of the highest and is composed of Georgia marble.

THREE MORE HOURS

From

UNION STATION

Take #42 bus marked "Mt. Pleasant." Ask for a transfer. Get off at 17th and H Sts., N.W. and walk across street to the bus stop on far side. Take #N-2 bus marked "American University" or #N-4 bus marked "Wesley Heights." Get off at 34th and Massachusetts Ave., N.W. Across the street is the main entrance to

14th and PENNA., N.W.

Walk up to 14th and F Sts., N.W. and take #40 or #42 bus marked "Mt. Pleasant." Ask for a transfer. Get off at 17th and H Sts., N.W. and take #N-2 bus marked "American University" or #N-4 bus marked "Wesley Heights." Get off at 34th and Mass. Ave., N.W. Across the street is the main entrance to

LINCOLN MEMORIAL

Take #R-4* bus marked "Farragut Square". Ask for a transfer. Get off at 18th and Eye Sts., N.W. Take #N-2 bus marked "American University" or #N-4 bus marked "Wesley Heights." Get off at 34th and Massachusetts Ave., N.W. Across the street to your right is the main entrance to
*Does not operate on Sundays.

The Naval Observatory was founded in 1843. It is charged with determining standard time for the United States and of furnishing mariners and aviators with the astronomical data needed for navigation. The Observatory also makes astronomical observations of the sun, moon, planets, comets, and stars. The Observatory occupies more than 50 buildings on a circular site. Its library contains the most complete collection of astronomical literature in the United States.

The site on which The Washington National Protestant Episcopal Cathedral stands, Mount Saint Alban, was owned by Joseph Nourse, a friend of George Washington and the first Registrar of the Treasury. Ground for the Cathedral was broken in 1907. Since then the work of building has progressed as money has been made available. Included in the portion already built are:

Above Ground: The Great Choir, flanked by two chapels, the North Transept (one arm of the Cross), the Crossing, and a small portion of the Nave.

Below Ground: The entire foundation of the Cathedral, including three crypt chapels. The style of the Cathedral is 14th Century Gothic. When finished, it will be one of the six largest ecclesiastical structures in the world. Nearby is the famous Bishop's Garden. President Wilson is buried here.

The National Zoological Park was authorized by Congress on March 2, 1889. It occupies 175 acres of park land in Rock Creek Valley and now houses 2600 specimens of animals, birds, and reptiles representing over 800 different species. The collection of bears, small mammals and reptiles are especially good but there are also good collections of larger animals, monkeys and

NAVAL OBSERVATORY

Open from 2 p.m., Mondays thru Fridays for guided tours only. RETURN BY WAY OF MAIN ENTRANCE. BOARD #N-2 BUS MARKED "American University" or #N-4 BUS MARKED "Wesley Heights" AT 34TH ST. AND MASS. AVE. GET OFF AT WISCONSIN AVE. CROSS WISCONSIN AVE., TURN LEFT AND WALK THROUGH THE COVERED ENTRANCE AND STRAIGHT ALONG THE ROAD TO MAIN ENTRANCE OF

THE WASHINGTON NATIONAL CATHEDRAL

The Cathedral is open every day from 9 a.m. to 6 p.m. Tours are conducted daily every hour on the half hour and on Sundays immediately following the 11 a.m. and 4 p.m. services. WHEN DEPARTING GO OUT SAME WAY YOU CAME IN. TURN RIGHT AND WALK ONE BLOCK TO WOODLEY RD. AT BUS STOP ACROSS THE STREET TAKE #M-6 OR #M-8 BUS MARKED "Columbia Rd." ASK FOR A TRANSFER. GET OFF AT CONNECTICUT AVE. AND CALVERT ST. CROSS THE STREET AND TAKE #L-2 OR #L-4 BUS MARKED "Connecticut and Nebraska" OR "Chevy Chase Circle" ON CONNECTICUT AVE. GET OFF AT THE MAIN ENTRANCE TO THE

ZOOLOGICAL PARK

The park is open from daylight to sundown every day. The buildings remain open from 9 a.m. to 5 p.m. in the summer and

CORCORAN ART GALLERY

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WHITE HOUSE

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*Does not operate on Sundays.

LINCOLN MEMORIAL

The Memorial is open every day between the hours of 9 a.m. and 9 p.m. Spend 30 minutes here.

FOR

FOR

14th and PENNA., N.W.

Take #R-4 bus marked "Paragut Square" at bus stop opposite the Memorial. Ask for a transfer. Get off at 18th and Penna. Ave., N.W. and take #50 bus marked "17th & Penna. Ave., S.E." or #38 bus marked "Union Station." It passes 14th & Penna. Ave., N.W.

Across the street is the main entrance to the Naval Observatory. Across the street is the main entrance to the Washington National Cathedral. Entrance to the Zoo is at the end of the line. *Does not operate on Sundays.

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ZOOLOGICAL PARK

The park is open from daylight to sundown every day. The buildings remain open from 9 a.m. to 5 p.m. in the summer and to 4:30 p.m. in the winter. You can spend as long here as the balance of your time permits. LEAVE THE ZOO THE SAME WAY YOU ENTERED. FOR

FOR

14th and PENNA., N.W.

Take #L-2 or #L-4 bus marked "Federal Triangle." Go to the end of the line. Walk right one block.

The Naval Observatory was founded in 1843. It is charged with determining standard time for the United States and of furnishing mariners and aviators with the astronomical data needed for navigation. The Observatory also makes astronomical observations of the sun, moon, planets, comets, and stars. The Observatory occupies more than 50 buildings on a circular site. Its library contains the most complete collection of astronomical literature in the United States.

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UNION STATION

Take #L-2 or #L-4 bus marked "Federal Triangle." Ask for a transfer. Get off at 13th and F Sts., N.W. and take #42 bus marked "13th and D Sts., N.E." direct to Union Station.

+

Conveniently, Comfortably, Privately by Cadillac Limousine

THREE-HOUR TOUR

Starting Points

UNION STATION

Walk one block to N. Capitol St. and Massachusetts Ave. (opp. City Post Office.) Take #80 bus marked "Brookland" or "Sargent Road". Get off at 12th and Quincy St., N.E. Walk to your right, two blocks to

14th and PENNA., N.W.

Walk north two blocks to G St., N.W. Board #80 bus marked "Brookland" or "Sargent Road" get off at 12th & Quincy St., N.E. Walk to your right two blocks to

ZOOLOGICAL PARK

Leave by Connecticut Ave. (front) entrance. Take #L-2 bus marked "Conn. and Nebraska" or #L-4 marked "Chevy Chase Circle" to Porter St. Ask for transfer. Cross the street to bus stop. Take #H-2 bus marked "Bladensburg and S. Dakota". Get off at 14th and Quincy St. Directly ahead is the main entrance to

The Monastery was consecrated on September 17, 1924. The land had been chosen in 1897 by Father Godfrey Schilling, a Franciscan, and two years later the Monastery was dedicated. Today, visitors can see replicas of the Bethlehem Manger, the Grotto of Gethsemane, the Grotto of Lourdes, the Holy Sepulchre, and the Catacombe of Rome. The architecture of the buildings is a combination of Byzantine and Italian Renaissance. Aristedes Leonori, a member of the Third Order of St. Francis, designed the church and the adjoining Monastery. In season, attractive rose gardens are tended by members of the Order.

The National Shrine of the Immaculate Conception is round-arched Romanesque, the dominant ecclesiastical style prior to the rise of the 13th Century Gothic. The cornerstone was laid on September 23, 1920. The Crypt of this Shrine is the largest in the world. The Grotto of Lourdes is a perfect reproduction of the famous shrine of Our Blessed Mother. The Crypt is lighted by 15 lunette windows, a feature of the 15 chapels, and each important in the scheme of symbolism. All the principal ceremonies in the Crypt are conducted from the High Altar, made of semi-transparent golden onyx from Algiers. The base is Roman Travertine marble. The mosaics that decorate the Chapels are said to be the finest in America.

FRANCISCAN MONASTERY

The buildings and grounds are open every day from 8 a.m. to 5 p.m. Guided tours are conducted. Spend 1 hour here. LEAVE BY MAIN ENTRANCE AND TAKE #H-2 BUS MARKED "Tenley Circle" or "Westmoreland Circle". GET OFF AT 4TH AND MICHIGAN AVENUE, N.E., ON YOUR RIGHT IS ENTRANCE ROAD TO CATHOLIC UNIVERSITY. WALK STRAIGHT AHEAD ABOUT ONE HALF BLOCK TO

SHRINE OF THE IMMACULATE CONCEPTION

Open every day from 7:30 a.m. until 5 p.m. Spend 45 minutes. LEAVE BY THE MAIN ENTRANCE. TURN RIGHT TO MICHIGAN AVE. AND 4TH ST.

FOR

FOR

THREE MORE HOURS

From

UNION STATION

Take #38 bus marked "Rosslyn". Get off at 14th & Penna. Ave., N.W. Take #50 bus marked "Bureau of Engraving" to end of line. Walk West

14th and PENNA., N.W.

Take #50 bus marked "Bureau of Engraving" to end of line. Walk West.

SHRINE OF THE IMMACULATE CONCEPTION

Take #80 bus marked "Potomac Park" to 14th and G Sts., N.W. Transfer to #50 bus marked "Bureau of Engraving" Ride to end of line. Walk West

The Memorial was dedicated in 1943. The architects were influenced by Jefferson's taste in architecture as reflected in the design of his home, Monticello, and the Rotunda at the University of Virginia. The exterior of the structure is white Vermont Marble, and the interior is of Georgia marble. Rudolph Evan's heroic bronze statue of Jefferson weighs 5 tons.

Potomac Park, approximately 400 acres, is filled-in swamp land. Of chief interest in this section is the Lincoln Memorial and the Reflecting Pool. South of Potomac Park is the Tidal Basin and the famed Japanese Cherry trees, the blossoms of which are usually out in the early part of April. Near the Tidal Basin are also the Rose Gardens. In season over a hundred varieties of roses bloom. At the eastern tip is Hains Point, where golfing, swimming, tennis, and bicycling facilities are also available. From the Point, one may also get a splendid view of the lower Potomac River, the Washington Channel, nearby Alexandria and the Virginia shore.

JEFFERSON MEMORIAL

The memorial is open from 9 a.m. to 9 p.m. every day. You can see this in about 15 minutes. You are now at the northern end of

POTOMAC PARK

A delightful hour's walk towards Hains Point at the southern tip of the Park is recommended. The park is open at all times. Return to Jefferson Memorial. Then, walk along the east side of the Tidal Basin until you come to the Bureau of Engraving at 14th and C Sts. Bus stand on C St. East of 14th.

MUSEUM OF HISTORY AND TECHNOLOGY

This museum will show the cultural and technological development of the United States from colonial times—Star Spangled Banner—costume—gown of first ladies—furnishings—famous inventions—agriculture—medicine—stamps—coins—musical instruments—early automobiles—locomotives—all presented in the perspective of history.

Take #50 Bus marked "14th & Colorado" or "14th & Decatur" to 14th & Const. Ave. N.W. This museum is open everyday from 9 a.m. to 4:30 p.m. closed Christmas Day. You could spend days examining the exhibits.

FOR

UNION STATION

14th and PENNA., N.W.

LIMOUSINE SERVICE

Have you ever wondered what it would be like to "see-the-town" in a chauffeured Cadillac?

D.C. Transit now has a fleet of new limousines available, 7-passenger, and air-conditioned which are for hire by the hour, day or week at a very nominal cost. If your party is small, remember there's room for 7—invite your friends or relatives to join you.

The Monastery was consecrated on September 17, 1924. The land had been chosen in 1897 by Father Godfrey Schilling, a Franciscan, and two years later the Monastery was dedicated. Today, visitors can see replicas of the Bethlehem Manger, the Grotto of Gethsemane, the Grotto of Lourdes, the Holy Sepulchre, and the Catacombs of Rome. The architecture of the buildings is a combination of Byzantine and Italian Renaissance. Aristedes Leonori, a member of the Third Order of St. Francis, designed the church and the adjoining Monastery. In season, attractive rose gardens are tended by members of the Order.

The National Shrine of the Immaculate Conception is round-arched Romanesque, the dominant ecclesiastical style prior to the rise of the 13th Century Gothic. The cornerstone was laid on September 23, 1920. The Crypt of this Shrine is the largest in the world. The Grotto of Lourdes is a perfect reproduction of the famous shrine of Our Blessed Mother. The Crypt is lighted by 15 lunette windows, a feature of the 15 chapels, and each important in the scheme of symbolism. All the principal ceremonies in the Crypt are conducted from the High Altar, made of semi-transparent golden onyx from Algiers. The base is Roman Travertine marble. The mosaics that decorate the Chapels are said to be the finest in America.

FRANCISCAN MONASTERY

The buildings and grounds are open every day from 8 a.m. to 5 p.m. Guided tours are conducted. Spend 1 hour here. LEAVE BY MAIN ENTRANCE AND TAKE #H-2 BUS MARKED "Tenley Circle" or "Westmoreland Circle". GET OFF AT 4TH AND MICHIGAN AVENUE, N.E., ON YOUR RIGHT IS ENTRANCE ROAD TO CATHOLIC UNIVERSITY. WALK STRAIGHT AHEAD ABOUT ONE HALF BLOCK TO

SHRINE OF THE IMMACULATE CONCEPTION

Open every day from 7:30 a.m. until 5 p.m. Spend 45 minutes. LEAVE BY THE MAIN ENTRANCE. TURN RIGHT TO MICHIGAN AVE. AND 4TH ST.

UNION STATION

Take #80 bus marked "Potomac Park" or 19th & F, N.W., to Mass. Ave. and N. Capitol Street (opp. City Post Office) and walk left one block to Union Station.

14th and PENNA., N.W.

Take #80 bus marked "Potomac Park" or 19th & F, N.W., to 14th and G Sts., N.W. Walk two blocks south to Penna. Ave., N.W.

bus marked "Bladensburg and S. Dakota". Get off at 14th and Quincy St. Directly ahead is the main entrance to

The Memorial was dedicated in 1943. The architects were influenced by Jefferson's taste in architecture as reflected in the design of his home, Monticello, and the Rotunda at the University of Virginia. The exterior of the structure is white Vermont Marble, and the interior is of Georgia marble. Rudolph Evan's heroic bronze statue of Jefferson weighs 5 tons.

JEFFERSON MEMORIAL

The memorial is open from 9 a.m. to 9 p.m. every day. You can see this in about 15 minutes. You are now at the northern end of

POTOMAC PARK

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FOR

UNION STATION

14th and PENNA., N.W.

LIMOUSINE SERVICE

Have you ever wondered what it would be like to "see the town" in a chauffeured Cadillac?

D.C. Transit now has a fleet of new limousines available, 7-passenger, and air-conditioned which are for hire by the hour, day or week at a very nominal cost. If your party is small, remember there's room for 7—invite your friends and relatives to join you.

You will be guided over this city and its adjoining sister—either Virginia or Maryland to see the historic, entertaining and interesting presentations they offer. Each point will be covered by your driver who has been especially trained for his job.

Your chauffeured limousine will pick you up at any location, take you where you want to go and return you to the place of your choice.

See the sights in luxurious fashion, returning safely, well informed and rested.

For your information regarding this service call FE. 3-5200 or stop by our charter office. We are always happy to assist you.

Spacious Luxury of a Cadillac Limousine for Your own Party

THREE-HOUR TOUR

Starting Points

UNION STATION

Take #38 bus marked "Rosslyn." As you travel from 29th and M Streets, N.W. you are passing through the section of the city known as

14th and PENNA., N.W.

Take #30 bus marked "Friendship Heights." As you travel from 29th and M Streets, N.W. you are passing through the section of the city known as

JEFFERSON MEMORIAL

Walk along east side of Tidal Basin until you come to Bureau of Engraving. Bus stand on C St., East of 14th. Take #30 bus marked "14th and Colorado." Ask for a transfer. Get off at 14th and Penna. Ave., N.W. and take #38 bus marked "Rosslyn." As you travel from 29th and M Sts., N.W., you are passing through the section of the city known as

GEORGETOWN

In 1703, Ninian Beall, a Scotsman, received a grant of 795 acres which he named Dumbarton. He built a home there and others followed. The main crop on the surrounding large plantations was tobacco, and as export increased the need for a town arose. In 1751 the Assembly of the Province of Maryland met, and this Scottish community was agreed upon as the site for a town - Georgetown, named after King George. Georgetown became a flourishing city, and for the next 25 years was a leading port. At the suggestion of George Washington, the Potomac Canal was built, and it carried trade as far north as the Greek Lakes, and as far south as the mouth of the Mississippi. In 1828, the Chesapeake & Ohio Railroad built a new canal, but soon railroads took the place of the canal and as the city of Washington grew, Georgetown's supremacy in trade died. Today, it is the location of many quaint homes, mansions, and relics of a by-gone era. Among the more interesting places to see in Georgetown today is "Evermay," 1623-28th St., N. W., an 18th Century Georgian Manor House, built in 1792 by Samuel Davidsen; Dumbarton Oaks, 3101 R St., N. W., another Georgian estate; the Bodisco House, 3322 C St., N. W., a massive brick house, once the Russian embassy, where the wealthy Baron Bodisco married 16 year old Harriet Williams in an elaborate ceremony; the Tubor House, 1644 - 31st St., built by a granddaughter of George Washington; and Washington's Engineering Headquarters, 3049 M St., N.W., said to be the General's headquarters while he planned the Federal City.

On Wisconsin Ave., take #30 bus marked "Friendship Heights" to Wisconsin & Mass. Ave. On Mass. Ave., W/B, take J-5 bus marked "Glen Echo."

GLEN ECHO PARK

(Open from early April to middle of September)

Glen Echo Park. Washington's finest amusement park and recreational center, is situated but a short distance from the District of Columbia-Maryland line. It is an elaborate example of the modern type of amusement park, presenting recreation of a high caliber through the medium of its wealth of attractions in a setting of scenic splendor. Every form of diversion is provided for young and old. A large shady picnic grove is at the disposal of visitors. Such recreational facilities as a magnificent Ball Room, Swimming Pool, boat-ride and other attractive buildings for the serving of refreshments, are all set in beautiful landscape surroundings. Among the more than 50 amusements and attractions is found one of the finest swimming pools in the country. It was built at a cost of nearly \$200,000 and has accommodations for over 4000 bathers. This magnificent Swimming Pool is unique, in that it comprises four pools, all in one unit - a large bathing area, a deep water section, a separate diving basin and a kiddie pool - all adjoining the Sand Beach. Brilliantly illuminated overhead and underwater, swimming is as popular during the night as it is during the daylight hours.

Return on J-5 bus marked "Federal Triangle". YOU WILL NOW RIDE ALONG

MASSACHUSETTS AVENUE

Massachusetts Avenue extends for a distance of 10 miles, directly across the District, except for a little less than a mile when it is broken by the Anacostia River, Anacostia Park, and the grounds of the D.C. General Hospital. That portion extending from Wisconsin Avenue to DuPont Circle is famous for its large number of beautiful embassies, legations, and stately houses of prominent people. Along this tree-shaded street are many attractively landscaped circles and squares (Lincoln, Stanton, Mt. Vernon, Dupont, Ward Circle, etc.) and statues honoring the memory of such famous people as Edmund Burke, Maj. Gen. George H. Thomas, Martin Luther, General Winfield Scott, and Daniel Webster. West of Wisconsin Ave., Massachusetts Ave., extends past American University and Naval Communications Annex. Among the many embassies and legations along Massachusetts Ave., are the Brazilian at 3000 Massachusetts, the Venezuelan at 2445, the Czechoslovakian at 2349, the Egyptian at 2301, the Romanian at 1601 23rd St., the Greek at 2221, the Luxembourg at 2200, the British at 3100, the Canadian at 1744, and the Belgian at

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UNION STATION

Take #38 bus marked "Union Station" direct to Union Station.

14th and PENNA., N. W.

Walk right one block

* NOTE—If you are continuing your trip to Connecticut Ave., get off at 20th St. and Massachusetts Ave.

THREE MORE HOURS

From

UNION STATION

Take #38 bus marked "Rosslyn." Ask for a transfer. Get off at 13th & Penna. Ave., N.W. and change to #L-2 or #L-4 bus marked "Chevy Chase Circle." You will be riding along

14th and PENNA., N.W.

Walk to 13th and Penna. Ave., N.W. and take #L-2 or #L-4 bus marked "Chevy Chase Circle." You will be riding along

MASSACHUSETTS AVENUE

At 20th and Mass. Ave. take #L-4 bus marked "Chevy Chase Circle." You will be riding along

CONNECTICUT AVENUE

Connecticut Avenue extends from Lafayette Square opposite the White House to Chevy Chase Circle, a distance of approximately five miles and continues several miles into the Maryland suburbs. Once one of Washington's most beautiful residential thoroughfares, it is today the city's most fashionable shopping avenues. One half mile north of the Taft Bridge, on the east side, is the entrance to the National Zoological Park, considered one of the finest parks of this kind in the world. Within its domain is an old stone house once occupied by John Adams, our 2nd President.

Approximately two miles north of the Taft Bridge, on the west side of the Avenue is the National Bureau of Standards, where the weights and measures of the U.S. are determined. It may be of interest to know that on the southern slopes of these beautiful grounds were planted, propagated, and brought to fruitful maturity our wonderful catawaba grape. This propagation was the work of John Adlum, a Revolutionary patriot.

GET OFF AT PORTER ST. AND CONN. AVE. WALK BACK TO YOUR RIGHT TO THE CORNER. DIAGONALLY ACROSS THE STREET TAKE AN #H-2 BUS MARKED "Bladensburg and S. Dakota" OR "Catholic University." YOU WILL THEN CROSS OVER THE NEW BRIDGE THRU

ROCK CREEK PARK

Rock Creek Park consists of more than 1800 acres of land. Its acquisition was authorized by Congress in 1890 as a "Pleasuring ground for the benefit and enjoyment of the people of the United States." Besides the pleasure of strolling through its attractive grounds; there are many interesting places to visit—the Joaquim Miller cabin, on Beach Drive, where lived the "Poet of the Sierras," Milk House Ford and Pierce Mill, an old-time water power mill that still operates. With the Park's numerous groves, and variety of wild flowers, tables, and benches it is an ideal site for the picnic-goer. Among the recreational facilities are golf courses, tennis courts, and many miles of bridle paths. Rock Creek stream, near the Zoo, was where Robert Fulton tested the first model of the Clermont.

GET OFF AT 16TH AND IRVING STS., N.W. WALK TO THE CORNER AND TO YOUR RIGHT ONE BLOCK TO THE BUS STOP. TAKE #S-2 BUS MARKED "Federal Triangle" YOU WILL THEN BE TRAVELING DOWN

16TH STREET

By a Congressional Act of March 14, 1913, 16th Street was named "Avenue of the Presidents," but was restored to its present designation by act of July 21, 1914. It is an attractive and modern residential street, extending approximately six and one-half miles directly north and south, from Lafayette Square to the District Line. Along this street are many fine embassies and legations, beautiful churches, and fine hotels and apartment houses. The upper portion of the street extends along Rock Creek Park. At 2829 16th St., N.W., you see the Mexican Embassy, the Italian Embassy is at 1601 Fuller St., N.W., the Polish Embassy at 2640 16th St., N.W., the Cuban Embassy at 2630 16th St., N.W. At 1520 16th St., N.W., you can see the legation of Yugoslavia. At the corner of 16th and M Sts., N.W., stands the National Geographic Society building. Across from this building, 1201 16th St., N.W., is situated the Headquarters of the National Education Association. The Soviet Embassy is at 1125 16th St., N.W., originally built by the widow of George Pullman. The brick building next to it, at 1135, houses the University Club. Many beautiful churches are located on 16th St.—including St. John's Episcopal Church (often referred to as the Church of the President) at 821 16th St., N.W.; Church of the Latter Day Saints, 2810 16th St., N.W.; the National Baptist Memorial Church, 16th and Columbia Rd.; the historic Foundry Methodist Church at 16th and P Sts., N.W.; the Gunton Temple Memorial Presbyterian Church at 16th and Newton St., N.W.; the Fourth Christian Science Church at 3505 16th St., N.W.; and the Christ Lutheran Church at 5101 16th St., N.W.

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FOR



UNION STATION

Get off at 16th and K Sts., N.W. Transfer to #D-2 or #D-4 bus marked "Trinidad" or "Ivy City" direct to Union Station.

FOR



14th and PENNA., N.W.

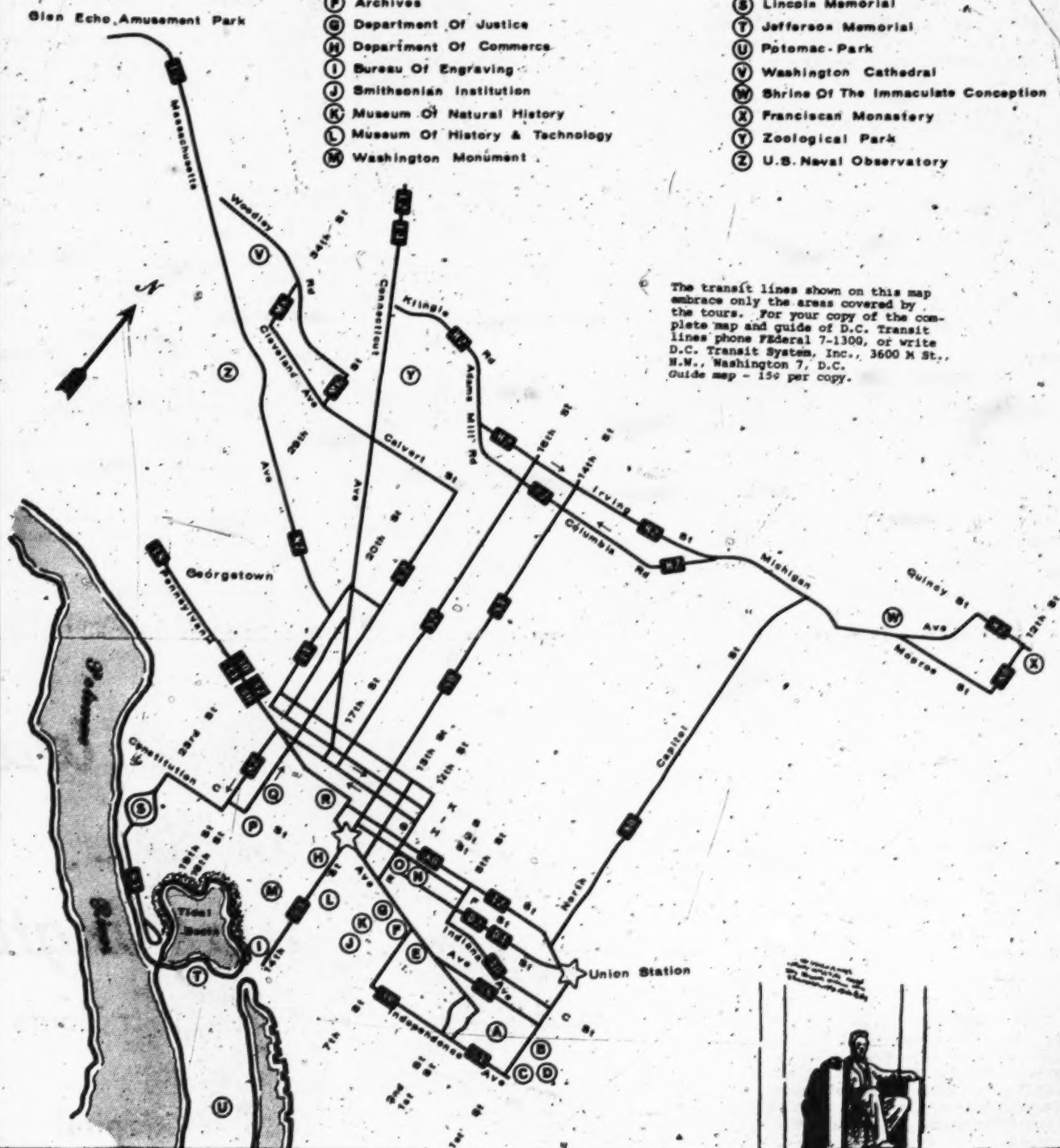
Continue to end of line. Change to #38 bus marked "Rosslyn" or #30 marked "Friendship Heights." It passes 14th and Penna. Ave., N.W.

KEY

- (A) The Capitol
- (B) U.S. Supreme Court
- (C) Library Of Congress
- (D) Folger Shakespeare
- (E) National Gallery Of Art
- (F) Archives
- (G) Department Of Justice
- (H) Department Of Commerce
- (I) Bureau Of Engraving
- (J) Smithsonian Institution
- (K) Museum Of Natural History
- (L) Museum Of History & Technology
- (M) Washington Monument

- (N) Lincoln Museum
- (O) Petersen House
- (P) Pan American Building
- (Q) Corcoran Art Gallery
- (R) White House
- (S) Lincoln Memorial
- (T) Jefferson Memorial
- (U) Potomac Park
- (V) Washington Cathedral
- (W) Shrine Of The Immaculate Conception
- (X) Franciscan Monastery
- (Y) Zoological Park
- (Z) U.S. Naval Observatory

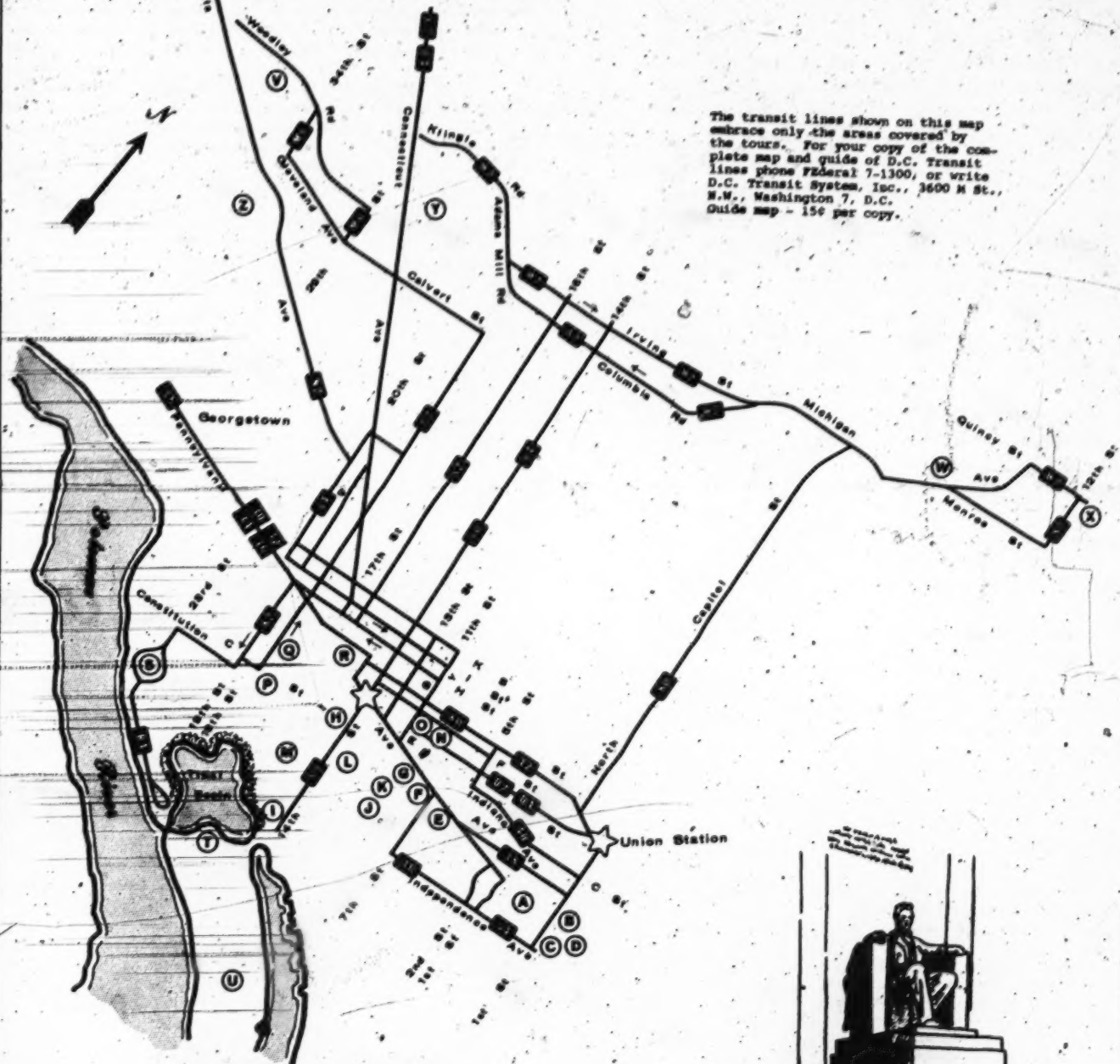
The transit lines shown on this map embrace only the areas covered by the tours. For your copy of the complete map and guide of D.C. transit lines phone Federal 7-1300, or write D.C. Transit System, Inc., 3600 M St., N.W., Washington 7, D.C. Guide map - 15¢ per copy.



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LEGEND

BUS ROUTES

STARTING POINTS OF TOURS



D.C. Transit System, Inc.

D. C. Transit maintains the largest fleet of independent owned coaches operating in any one city in the country. The operators are hand-picked and selected with the care that insures courtesy and an ability to make the trip of a visitor long to be remembered. Organizations, parties, or groups of 25 or more, who wish to make a tour of historic Washington and its environs, will find our Charter rates very reasonable. For assistance in arranging a tour, call Federal 3-3200 Ext. 653-654, or visit the Charter and Sightseeing office at 1422 New York Avenue N.W.

OUR CHARTER & SIGHTSEEING DEPARTMENT

Our bus fleet is one of the most up-to-date in the country and is the largest fleet operated in a single city by an independent company. For several successive years D. C. Transit has been awarded top nation-wide honors for excellence of maintenance and achievement. The fare in Washington is 25¢ cash, or 4 tokens for \$0.85, with free transfers between all D. C. Transit lines on above fare for use in completing a continuous trip in the same general direction at authorized transfer points, subject to the time limitation. Return your transfer if you plan to change to another line going in the same general direction. The tours in this booklet are designed to keep you at most times within a two cash fare budget.

Do not hesitate to ask your bus operator for information. He will be glad to be of assistance. We hope you like our city — and us — and will come back to visit again.

SOMETHING ABOUT US

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The layout of Washington, with its wide streets and radiating streets and avenues, is an outgrowth of the plan envisaged by Major Charles Pierre L'Enfant, a French engineer whom Washington hired to design the Federal City. Although L'Enfant did not live to see his plan materialize in all respects, many of his ideas were adopted in the final plan of the city. The growth of Washington was slow and discouraging. During the Civil War its population and marked expansion. World War II saw another era of progress. Today, the Nation's Capital and its suburbs have a population of over 1,250,000. It is a good city in which to live and work. Hundreds of thousands of American pilgrims each year visit its shrines and show places. Few cities in the world can boast such a splendid variety of great museums, art galleries, libraries, stately public buildings, theaters, and recreational facilities.

Washington was not always the beautiful city it is today. Once it was largely a swamp land, and inhabited by the Potomac Indians. But out of the swamp land has risen one of the most attractive cities in the world—a city rich in history and tradition. Washington as a site for the Nation's Capital grew out of the need of a permanent capital by a roving Continental Congress. Difficulties arose in choosing a site. George Washington, as President, recommended a southern location. Vice-President Adams favored a northern location. But, finally, the Potomac region was selected and a commission headed by President Washington was appointed to determine a location not more than ten miles square. The site on which the city now stands was ceded by Maryland and Virginia in 1791. Later that portion ceded by Virginia, including the town of Alexandria, again became part of the Old Dominion State.

WASHINGTON

SOMETHING ABOUT

*So... You Want
to See
Washington*

10 Three-Hour Tours
of the
Nation's Capital



SOMETHING ABOUT US

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Lincoln Memorial (Potomac Park)	3
Lincoln Museum (10th St. bet. E & F Sts., N.W.)	2
Massachusetts Avenue (From 49th St. to DuPont Circle)	5
National Archives Building (Penn. Ave. & 7th St., N.W.)	2
National Gallery of Art (Constitution Ave. & 6th St., N.W.)	2
National Museum - Natural History Building	1
(10th & Constitution Ave., N.W.)	
Naval Observatory (Massachusetts Ave. & 34th St., N.W.)	3
Pan American Union	2
(17th St. & Constitution Ave., & C St., N.W.)	
Peterson House (516 - 10th St., N.W.)	2
Rock Creek Park	6
10th Street (From Irving St., N.W., to K St., N.W.)	6
Smithsonian Institution (Near 10th & Independence Ave., S.W.)	1
Supreme Court Building, U.S. (E. Capitol & 2nd Sts., N.E.)	1
Tidal Basin	4
Washington Cathedral (Wisconsin Ave. & Woodlory Rd., N.W.)	3
Washington Monument	1
White House	3
Zoological Park	3

Prepared and distributed without charge by the D.C. Transit System, Inc. for the convenience of those who want to see the highlights of the city over the regular public transportation routes.

Washington was not always the beautiful city it is today. Once it was largely a swamp land, and inhabited by the Powhatan Indians. But out of the swamp land has risen one of the most attractive cities in the world—a city rich in history and tradition!

Washington as a site for the Nation's Capital grew out of the need of a permanent capital by a roving Continental Congress. Difficulties arose in choosing a site. George Washington, as President, recommended a southern location. Vice-President Adams favored a northern location. But, finally, the Potomac region was selected and a commission headed by President Washington was appointed to determine a location not more than ten miles square. The site on which the city now stands was ceded by Maryland and Virginia in 1791. Later that portion ceded by Virginia, including the town of Alexandria, again became part of the Old Dominion State.

The layout of Washington, with its wide streets and radiating streets and avenues, is an outgrowth of the plan entirely shade trees, numerous parks, large circles with

direct whom Washington lived in the French Embassy by Major Charles Pierre L'Enfant, a French

WASHINGTON

SOMETHING ABOUT

So... You Want to See Washington

10 Three-Hour Tours of the Nation's Capital



This booklet is designed to cover 5 full-days of sightseeing by bus. You can start on any tour and follow thru to the next without regard to the sequence in the booklet. The tours, starting from Union Station and 14th St., and Pennsylvania Ave., N.W., two of the most prominent focal points in the city are grouped according to popular preference. FOR FURTHER INFORMATION, CALL FEDERAL 7-1300.

SIGHTSEEING IN

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TOUR NUMBER 10

DELUXE ALL DAY TOUR
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THE BEST FIRST"



U.S. CAPITOL



MT. VERNON

**FEATURED STOPS: U.S. CAPIT
ARLINGTON NATIONAL CEMET
CHRIST CHURCH • ALEXANDRI**

This tour is by far, the best, most complete tour of
represented in Shrines and Memorials of unsurpas
represented in the modern and Democratic proce
The best features of the other tours listed herein
fare. Your courteous and efficient guide will also
Triangle; Capitol Hill; Washington Monument; Bla
The above tour is available by Air-Conditioned C
(Transportation only). \$80.00 plus tax and fees
From April thru August, when boat is operating,
cost. Ask your Driver-Guide.
ALL ARLINGTON CEMETERY TOURS /

TOUR NUMBER 1

**MORNING TOUR OF
PUBLIC BUILDINGS**

FEATURED STOPS

MUSEUM OF HISTORY AND TECHNOLOGY
BUREAU OF ENGRAVING AND PRINTING
WHITE HOUSE • U.S. CAPITOL BUILDING

This tour is your natural visual introduction to the
historic sights and beautiful places that represent
our Nation's proud past and promising future.

Your friendly and courteous guide will give you
interesting and authentic information as you travel
between the featured points of your tour, noting
such sights as the Washington Monument; Blair
House; Federal Triangle; U. S. Treasury; Senate
Office; Supreme Court and Library of Congress, to
name but a few.

The above tour available by Air-Conditioned Cadil-
lac Limousine, with Chauffeur (1 to 7 persons).
(Transportation only) **\$42.50 plus tax and fees**



TOMB OF UNKNOWNNS

***FARE**
Adults \$6.00
Children (under 14) \$3.00
(includes admission fees)

TOUR TIME Approx. 3 Hrs.

DEPARTURES

2:30 P.M.—Daily
April 1st thru October 31st
2:00 P.M.—Daily
November 1st thru March 31st

Additional Departures

9:30 A.M. and 11:00 A.M.
Mon. thru Sat.
April 1st thru October 31st

TOUR NUMBER

**ARLINGTON NATIONAL
CEMETERY AND THE
CITY OF WASHINGTON**

FEATURED STOPS

LINCOLN MEMORIAL
IWQ JIMA MEMORIAL
J.F. KENNEDY GRAVES
TOMB OF THE UNKNOW
ARLINGTON NATIONAL CEM

An unusual opportunity to pay homage
unknown and best known men of o
proud history. Truly a moving experie

Along with the Shrines that you will v
have a rare opportunity to view ei
sights as the U. S. Treasury; White I
Mansion; National Geographic Societ
ters; Embassy Row; C & O Canal; Per
Basin; Jefferson Memorial and others

The above tour available by Air-Conditi
lac Limousine, with Chauffeur (1 to
(Transportation only) **\$32**



WHITE HOUSE

*FARE

Adults \$6.00
Children (under 14) \$3.00
(includes admission fees)

TOUR TIME

Approx. 4 Hrs

DEPARTURES

9:30 A.M.—Daily—All Year

Additional Departures

11:00 A.M.—Mon. thru Sat.
April 1st thru October 31st

TOUR NUMBER



TOUR NUMBER



TOUR NUMBER 4

ECONOMY-ALL DAY TOUR

FEATURED STOPS

MUSEUM OF HISTORY AND TECHNOLOGY
BUREAU OF ENGRAVING AND PRINTING
WHITE HOUSE • U.S. CAPITOL BUILDING
LINCOLN MEMORIAL
TOMB OF THE UNKNOWN
J. F. KENNEDY GRAVESITE
IWO JIMA MEMORIAL

A convenient and economical way for you to see many of the city's most prominent sights with time allowed for lunch.

In addition to the sights that you will visit, your guide will point out enroute such places as the beautiful Mall area; Blair House; Federal Trade Building; Capitol Hill; U. S. Monument; Embassy Row; Pentagon; Tidal Basin; Jefferson Memorial and Lincoln Memorial, along with many others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
(Transportation only) \$72.50 plus tax and fees

IWO JIMA MEMORIAL

*FARE

Adults \$11.00

Children (under 14) \$5.50

TOUR TIME

Approx. 7 Hrs.

(Time out for lunch)

DEPARTURES

9:30 A.M.—Daily—All Year



LINCOLN MEMORIAL

*FARE

Adults \$12.00

Children (under 14) \$6.00

(*includes admission fees)

(Lunch not included)

TOUR TIME

Approx. 7 1/2 Hrs.

(Time out for lunch)

DEPARTURES

9:30 A.M.—Daily—All Year

TOUR NUMBER

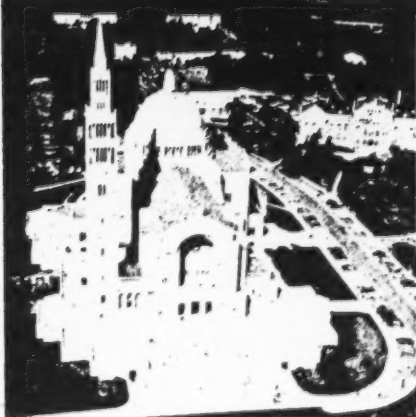
THRIFTY—ALL DAY TOUR

FEATURED STOPS

MUSEUM OF HISTORY AND TECHNOLOGY
BUREAU OF ENGRAVING AND PRINTING
WHITE HOUSE • U.S. CAPITOL
JEFFERSON MEMORIAL
CHRIST CHURCH • MT. VERNON

This tour represents an impressive contrast between the National Government processes and that of the honor of her founders.

Your guide will offer an interesting enroute, pointing out authentic information the beautiful Mall area; Federal Triangle; Treasury; Blair House; Commerce Department; Supreme Court; Library of Congress; Independence Hall; Alexandria; Lincoln Memorial and the above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons) \$80.00 plus tax and fees. From April thru August, when boat transportation is available, return from Mt. Vernon via the Historic River can be arranged at additional cost. Driver-Guide.



NATIONAL CATHOLIC SHRINE

FARE

Adults \$6.00

Children (under 14) \$3.00

TOUR TIME

Approx. 4 Hrs.

DEPARTURES

2:30 P.M.—Thurs. and Fri. Only
April 1st thru October 31st

TOUR NUMBER 7

EPISCOPAL CATHEDRAL, SHRINE, MONASTERY AND RESIDENTIAL WASHINGTON

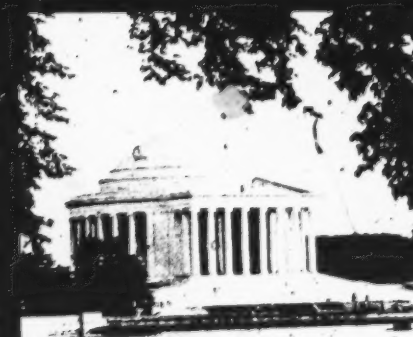
FEATURED STOPS

EPISCOPAL CATHEDRAL
FRANCISCAN MONASTERY
NATIONAL CATHOLIC SHRINE

A truly unusual and charming view of the local personality of a beautiful city and her international residents.

Your friendly and courteous guide will give you accurate information of exciting interest about Washington's famous Embassy Row and pointing out various countries in residence thereon. Also viewing St. Matthew's Cathedral; Soldiers Home; Catholic University; Rock Creek Park and the beautiful residential sections, enroute.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
\$42.50 plus tax and fees



JEFFERSON MEMORIAL

*FARE

Adults \$6.00

Children (under 14) \$3.00

(*includes admission fees)

TOUR TIME

Approx. 3 1/2 Hrs.

DEPARTURES

2:30 P.M.—Mon. thru Fri.
April 1st thru October 31st

TOUR NUMBER

AFTERNOON TOUR OF PUBLIC BUILDINGS

FEATURED STOPS

F. B. I. • FEDERAL ARCHITECTURAL
WAX MUSEUM • JEFFERSON MEMORIAL

This tour represents an exciting afternoon stay in the Nation's Capital, allow places of extreme interest—a bit unusual.

Along with the more unique stops on your friendly and courteous guide will give an interesting background on places as such as: The White House; Pennsylvania State Capitol; Blair House; Federal Triangle; Smithsonian Complex; Capitol Hill Area and the above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons) \$42.50 plus tax and fees.

(Transportation only) \$42.50 plus tax and fees

JIMA MEMORIAL
*FARE

Adults \$11.00
Children (under 14) \$5.50
(includes admission fees)
(Lunch not included)

TOUR TIME
Approx. 7 Hrs.
(Time out for lunch)

DÉPARTURES
9:30 A.M.—Daily—All Year

**BUREAU OF ENGRAVING AND PRINTING
WHITE HOUSE • U.S. CAPITOL BUILDING
LINCOLN MEMORIAL
TOMB OF THE UNKNOWN
J. F. KENNEDY GRAVESITE
IWO JIMA MEMORIAL**

A convenient and economical way for you to see many of the city's most prominent sights with time allowed for lunch.

In addition to the sights that you will visit, your guide will point out enroute such places as the beautiful Mall area; Blair House; Federal Trade Building; Capitol Hill; U. S. Monument; Embassy Row; Pentagon; Tidal Basin; Jefferson Memorial and Lincoln Memorial, along with many others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
(Transportation only) \$72.50 plus tax and fees

LINCOLN MEMORIAL
*FARE

Adults \$12.00
Children (under 14) \$6.00
(includes admission fees)
(Lunch not included)

TOUR TIME
Approx. 7 1/2 Hrs.
(Time out for lunch)

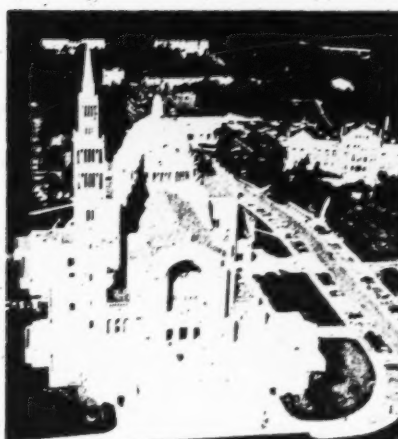
DÉPARTURES
9:30 A.M.—Daily—All Year

**WHITE HOUSE • U.S. CAPITOL
JEFFERSON MEMORIAL
CHRIST CHURCH • MT. VERNON**

This tour represents an impressive contrast of pleasing contrast between the Nation's Government processes and that of the honor of her founders.

Your guide will offer an interesting enroute, pointing out authentic information the beautiful Mall area; Federal Treasury; Blair House; Commerce Department; Supreme Court; Library of Congress; National Portrait; Alexandria; Lincoln Memorial and

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
(Transportation only) \$80.00 plus tax
From April thru August, when boat is return from Mt. Vernon via the Historic River can be arranged at additional cost Driver-Guide.



NATIONAL CATHOLIC SHRINE
*FARE

Adults \$6.00
Children (under 14) \$3.00
(includes admission fees)
(Lunch not included)

TOUR TIME
Approx. 4 Hrs.

DÉPARTURES
2:30 P.M.—Mon. thru Fri.
April 1st thru October 31st

TOUR NUMBER 7

**EPISCOPAL CATHEDRAL,
SHRINE, MONASTERY AND
RESIDENTIAL WASHINGTON**

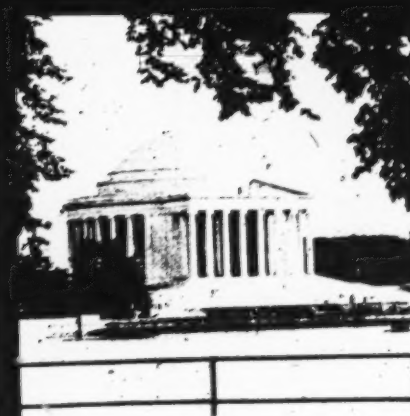
FEATURED STOPS

**EPISCOPAL CATHEDRAL
FRANCISCAN MONASTERY
NATIONAL CATHOLIC SHRINE**

A truly unusual and charming view of the local personality of a beautiful city and her international residents.

Your friendly and courteous guide will give you accurate information of exciting interest about Washington's famous Embassy Row and pointing out various countries in residence thereon. Also viewing St. Matthew's Cathedral; Soldiers Home; Catholic University; Rock Creek Park and the beautiful residential sections, enroute.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
(Transportation only) \$42.50 plus tax



JEFFERSON MEMORIAL
*FARE

Adults \$6.00
Children (under 14) \$3.00
(includes admission fees)

TOUR TIME
Approx. 3 1/2 Hrs.

DÉPARTURES
2:30 P.M.—Mon. thru Fri.
April 1st thru October 31st

TOUR NUMBER 8

**AFTERNOON TOUR
OF PUBLIC BUILDINGS**

FEATURED STOPS

**F. B. I. • FEDERAL ARCHIVES
WAX MUSEUM • JEFFERSON MEMORIAL**

This tour represents an exciting addition stay in the Nation's Capital, allowing places of extreme interest—a bit unusual.

Along with the more unique stops on your friendly and courteous guide will interesting background on places as such as: The White House; Pennsylvania State Capitol; Blair House; Federal Triangle; Smithsonian Complex; Capitol Hill Area and

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
(Transportation only) \$42.50 plus tax

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FEATURED STOPS: U.S. CAPITOL • WHITE HOUSE • LINCOLN MEMORIAL
ARLINGTON NATIONAL CEMETERY • IWO JIMA MEMORIAL •
CHRIST CHURCH • ALEXANDRIA • MT. VERNON

This tour is by far, the best, most complete tour of Washington, offering an historic introduction to the rich heritage of our Great Nation, represented in Shrines and Memorials of unsurpassed beauty. In addition, you will view the results of our forefathers' labor and sacrifice, represented in the modern and Democratic process of our Government at work.

The best features of the other tours listed herein are combined in this schedule along with a delicious lunch, all included in your single fare. Your courteous and efficient guide will also point out enroute, interesting and accurate information on such places as the Federal Triangle; Capitol Hill; Washington Monument; Blair House; 17th St. Group; Federal Reserve; Naval Research Lab., to mention only a few. The above tour is available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).

(Transportation only) \$80.00 plus tax and fees

From April thru August, when boat is operating, return from Mt. Vernon via the Historic Potomac River can be arranged at additional cost. Ask your Driver-Guide.

ALL ARLINGTON CEMETERY TOURS ARE SCHEDULED TO COINCIDE WITH CHANGING OF THE GUARD

*FARE

Adults \$16.00
 Children (under 14) \$8.00
 (*includes lunch and admission fees)

TOUR TIME

Approx. 8 Hrs.
 (Time out for lunch)

DEPARTURES

9:30 A.M.—Daily—All Year

TOUR NUMBER
ARLINGTON NATIONAL
CEMETERY AND THE
CITY OF WASHINGTON

2

FEATURED STOPS

LINCOLN MEMORIAL
IWO JIMA MEMORIAL
J.F. KENNEDY GRAVESITE
TOMB OF THE UNKNOWN
ARLINGTON NATIONAL CEMETERY

An unusual opportunity to pay homage to both the unknown and best known men of our country's proud history. Truly a moving experience.

Along with the Shrines that you will visit, you will have a rare opportunity to view enroute such sights as the U. S. Treasury; White House; Blair Mansion; National Geographic Society Headquarters; Embassy Row; C & O Canal; Pentagon; Tidal Basin; Jefferson Memorial and others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
 (Transportation only) **\$32.50 plus tax**

MT. VERNON

*FARE

Adults \$7.00
 Children (under 14) \$3.50
 (*includes admission fees)

TOUR TIME

Approx. 3½ Hrs.

DEPARTURES

2:30 P.M.—Daily

April 1st thru October 31st

2:00 P.M.—Daily

November 1st thru March 31st

3

FEATURED STOPS

JEFFERSON MEMORIAL
CHRIST CHURCH • MT. VERNON

A bit of history restored in every detail, an area which spawned the very ideals of our great Nation as it is today, yet remaining much as it was when men like George Washington walked the cobblestone streets.

While enroute between stops, your guide will point out such sights as the National Academy of Science; Federal Reserve; Department of Interior; Memorial Bridge; Robert E. Lee Mansion; National Airport; Pentagon; Naval Research and many others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).
 (Transportation only) **\$42.50 plus tax and fees**

From April thru August, when boat is operating, return from Mt. Vernon via the Historic Potomac River can be arranged at additional cost. Ask your Driver-Guide.

TOUR NUMBER

5

FEATURED STOPS

MUSEUM OF HISTORY AND TECHNOLOGY
BUREAU OF ENGRAVING AND PRINTING
WHITE HOUSE • U.S. CAPITOL BUILDING
JEFFERSON MEMORIAL
CHRIST CHURCH • MT. VERNON

This tour represents an impressive combination of pleasing contrast between the Nation's efficient Government processes and that of the Shrines in honor of her founders.

Your guide will offer an interesting commentary enroute, pointing out authentic information about the beautiful Mall area; Federal Triangle; U. S. Treasury; Blair House; Commerce Department; Supreme Court; Library of Congress; National Airport; Alexandria; Lincoln Memorial and others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons). (Transportation only) \$80.00 plus tax and fees

From April thru August, when boat is operating, return from Mt. Vernon via the Historic Potomac River can be arranged at additional cost. Ask your Driver-Guide.

FEATURED STOPS

F. B. I. • FEDERAL ARCHIVES
WAX MUSEUM • JEFFERSON MEMORIAL

This tour represents an exciting addition to your stay in the Nation's Capital, allowing visits to places of extreme interest—a bit unusual in nature.

Along with the more unique stops on your itinerary, your friendly and courteous guide will give you an interesting background on places as you pass by, such as: The White House; Pennsylvania Avenue; Blair House; Federal Triangle; Smithsonian Institute Complex; Capitol Hill Area and many others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).

JOHN F. KENNEDY GRAVESITE

*FARE

Adults \$11.00

Children (under 14) \$5.50

(*includes admission fees)
(Lunch not included)

TOUR TIME

Approx. 6½ Hrs.

(Time out for lunch)

DEPARTURES

9:30 A.M.—Mon. thru Fri.

April 1st thru October 31st

TOUR NUMBER

SPECIAL—ALL DAY TOUR

6

FEATURED STOPS

ARLINGTON NATIONAL CEMETERY
TOMB OF THE UNKNOWN
J. F. KENNEDY GRAVESITE
IWO JIMA MEMORIAL
LINCOLN MEMORIAL • F. B. I.
FEDERAL ARCHIVES • WAX MUSEUM
JEFFERSON MEMORIAL

A unique combination of well known, yet little publicized sights together with many places which should not be missed on your itinerary.

While enroute between visits, you will view the Federal Triangle; White House; Blair House; National Geographic; Embassy Row; Capitol Hill; House and Senate Office Buildings and Supreme Court, to give you just a sample.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons). (Transportation only) \$72.50 plus tax and fees

FEATURED STOPS

WORDEN FIELD • NAVAL MUSEUM
NAVY CHAPEL • BANCROFT HALL

An unusual and exciting side trip showing you one of the Nation's first seaport cities with its rich history restored, combined with the most modern institution for training our men of today who "go down to the sea in ships."

Space does not allow a complete description of all of the sights that will be pointed out to you, but some highlights are: The Maryland State House; Home of the Governor; St. John's College; Hammond House; Chase Home and the Quaint Dairy and Tobacco Farms enroute.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).

U.S. NAVY CHAPEL

FARE

Adults \$7.00

Children (under 14) \$3.50

TOUR TIME

Approx. 4½ Hrs.

DEPARTURES

2:30 P.M.—Wednesday Only

April 1st thru October 31st

JEFFERSON MEMORIAL CHRIST CHURCH • MT. VERNON

This tour represents an impressive combination of pleasing contrast between the Nation's efficient Government processes and that of the Shrines in honor of her founders.

Your guide will offer an interesting commentary enroute, pointing out authentic information about the beautiful Mall area; Federal Triangle; U. S. Treasury; Blair House; Commerce Department; Supreme Court; Library of Congress; National Airport; Alexandria; Lincoln Memorial and others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons). (Transportation only) \$80.00 plus tax and fees. From April thru August, when boat is operating, return from Mt. Vernon via the Historic Potomac River can be arranged at additional cost. Ask your Driver-Guide.

JOHN F. KENNEDY GRAVESITE *FARE

Adults \$11.00
Children (under 14) \$5.50

(*includes admission fees)
(Lunch not included)

TOUR TIME

Approx. 6½ Hrs.

(Time out for lunch)

DEPARTURES

9:30 A.M.—Mon. thru Fri.

April 1st thru October 31st

J. F. KENNEDY GRAVESITE IWO JIMA MEMORIAL LINCOLN MEMORIAL • F. B. I. FEDERAL ARCHIVES • WAX MUSEUM JEFFERSON MEMORIAL

A unique combination of well known, yet little publicized sights together with many places which should not be missed on your itinerary.

While enroute between visits, you will view the Federal Triangle; White House; Blair House; National Geographic; Embassy Row; Capitol Hill; House and Senate Office Buildings and Supreme Court, to give you just a sample.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons). (Transportation only) \$72.50 plus tax and fees

8

9

FEATURED STOPS

F. B. I. • FEDERAL ARCHIVES WAX MUSEUM • JEFFERSON MEMORIAL

This tour represents an exciting addition to your stay in the Nation's Capital, allowing visits to places of extreme interest—a bit unusual in nature.

Along with the more unique stops on your itinerary, your friendly and courteous guide will give you an interesting background on places as you pass by, such as: The White House; Pennsylvania Avenue; Blair House; Federal Triangle; Smithsonian Institute Complex; Capitol Hill Area and many others.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).

(Transportation only) \$42.50 plus tax and fees

U.S. NAVY CHAPEL

FARE

Adults \$7.00
Children (under 14) \$3.50

TOUR TIME

Approx. 4½ Hrs.

DEPARTURES

2:30 P.M.—Wednesday Only

April 1st thru October 31st

FEATURED STOPS

WORDEN FIELD • NAVAL MUSEUM NAVY CHAPEL • BANCROFT HALL

An unusual and exciting side trip showing you one of the Nation's first seaport cities with its rich history restored, combined with the most modern institution for training our men of today who "go down to the sea in ships."

Space does not allow a complete description of all of the sights that will be pointed out to you, but some highlights are: The Maryland State House; Home of the Governor; St. John's College; Hammond House; Chase Home and the Quaint Dairy and Tobacco Farms enroute.

The above tour available by Air-Conditioned Cadillac Limousine, with Chauffeur (1 to 7 persons).

(Transportation only) \$52.50 plus tax

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JOHN F. DAVIS, CLERK

October Term, 1968

No. **19**

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,

Petitioner,

vs.

**WASHINGTON METROPOLITAN AREA TRANSIT COM-
MISSION, D. C. TRANSIT SYSTEM, INC., WASHING-
TON SIGHTSEEING TOURS, INC., BLUE LINES, INC.,
AND WHITE HOUSE SIGHTSEEING CORPORATION.**

**Petition for a Writ of Certiorari to the United States
Court of Appeals for the District of Columbia.**

**JEFFREY L. NAGIN,
ALLEN E. SUSMAN,**

**Suite 444,
9601 Wilshire Boulevard,
Beverly Hills, Calif. 90210,**

Attorneys for Petitioner.

Of Counsel,

ROSENFELD, MEYER & SUSMAN.



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IN THE
Supreme Court of the United States

October Term, 1967

No.

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
Petitioner,
vs.

WASHINGTON METROPOLITAN AREA TRANSIT COM-
MISSION, D. C. TRANSIT SYSTEM, INC., WASHING-
TON SIGHTSEEING TOURS, INC., BLUE LINES, INC.,
AND WHITE HOUSE SIGHTSEEING CORPORATION.

**Petition for a Writ of Certiorari to the United States
Court of Appeals for the District of Columbia.**

Universal Interpretive Shuttle Corporation petitions for a writ of certiorari to review the order of the United States Court of Appeals for the District of Columbia Circuit which was entered on June 13, 1967.

Opinions Below.

The opinion of the District Court is set forth in Appendix B and the order of the Court of Appeals reversing the order of the District Court is set forth in Appendix A.

Jurisdiction.

The order of the Court of Appeals was entered on June 13, 1967. A Petition for *en banc* rehearing was denied on October 3, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented.

1. Did Congress, in approving the interstate compact creating the Washington Metropolitan Area Transit Commission, intend to take away from the executive department of the United States, its exclusive control of the central Mall area of the District of Columbia and to give the Washington Metropolitan Area Transit Commission the power to prevent the United States from conducting, through a private concessioner, a service which provides a narrative description of points of interest within the central Mall area while carrying visitors around the area in trams?
2. Is a mobile service provided by a concessioner of the United States within the central Mall area for the purpose of providing visitors a narrative description concerning points of interest, "transportation for hire" within the meaning of the interstate compact creating the Washington Metropolitan Area Transit Commission?
3. Is a mobile interpretive service utilizing vehicles bearing the National Park Service emblem and operated by a concessioner on federally owned and managed park lands under a contract with the Federal Government which provides for the control of every detail of operation by the Secretary of Interior and for a division of gross proceeds between the concessioner and the Govern-

ment, transportation "by the Federal Government" within the meaning of the interstate compact creating the Washington Metropolitan Area Transit Commission?

4. Does the Washington Metropolitan Area Transit Commission whose jurisdiction is limited to the regulation of persons providing "transportation for hire . . . between any points in the Metropolitan District" have regulatory jurisdiction over a mobile interpretive service conducted within the central Mall area which service originates and terminates at the same point, with no passengers embarking or debarking en route?

5. Is the Congressionally enacted franchise of a common carrier, which prohibits the operation of a competitive bus or railway line transporting passengers over a given route on a fixed schedule without a certificate being issued by a local regulatory agency, violated by the operation without a certificate of a mobile interpretive service within the central Mall area when the Secretary of Interior retains the right from time to time to change rates, routes and schedules of the service?

Statutes Involved.

The primary statutory provisions involved are as follows:

The Washington Metropolitan Area Transit Regulation Compact as approved by Act of September 15, 1960, 74 Stat. 1031, D. C. Code § 1-1410 to 1-1416 (1961 ed.); 16 U.S.C. §§ 1, 1c, 2, 3, 17b, 20, and 20a-g; and D. C. Code §§ 8-108 and 8-144. Relevant portions of the aforementioned Compact and statutes are printed in Appendix D.

Statement of the Case.

On May 29, 1967, the United States of America executed a contract (the Contract) which is reproduced in Appendix C with Universal Interpretive Shuttle Corporation (Universal) for the operation by Universal of an interpretive shuttle service in the central Mall area of Washington, D. C.

The Washington Metropolitan Area Transit Commission (WMATC), an agency created by an interstate compact between the States of Maryland and Virginia and the District of Columbia, with the consent of Congress, Act of September 15, 1960, 74 Stat. 1031, D. C. Code §1-1410, commenced this action in the United States District Court for the District of Columbia to enjoin Universal from operating under the Contract without first obtaining a certificate of convenience and necessity from WMATC.

D. C. Transit System, Inc. (D.C. Transit), Washington Sightseeing Tours, Inc., Blue Lines, Inc., and White House Sightseeing Corporation each of which holds a certificate from WMATC to operate charter and sightseeing services (D.C. Transit also holds a certificate to perform regular route service) intervened as parties plaintiff. The United States filed a representation of interest in support of Universal's position and participated in all the proceedings in the District Court.

The District Court dismissed the complaint and all of the plaintiffs thereafter appealed to the United States Court of Appeals for the District of Columbia. The United States as *amicus curiae* and Universal sought affirmance in the Court of Appeals of the District Court's judgment, but a three-judge panel of the

Court of Appeals (one judge dissenting) reversed the order of the District Court. Universal petitioned the Court of Appeals for an *en banc* rehearing and the United States filed an *amicus curiae* brief in support of Universal's petition. On October 3, 1967, the petition was denied.

The Central Mall area is included within the National Park System and as such is specifically committed to the "exclusive charge and control" of the Director of the National Park Service, a subordinate of the Secretary of the Interior, by the Act of July 1, 1898, 30 Stat. 570, as amended, D. C. Code §8-108. It is bounded on the north by the White House, on the east by the Grant Memorial, on the south by the Jefferson Memorial, and on the west by the Lincoln Memorial [Government and Deft's Ex. 6]. The Central Mall, which contains and is flanked by some of the foremost national shrines and many points of historic, educational, aesthetic and patriotic importance, is a focal point of interest in the Federal City.

It has been estimated that more than 12 million persons visited the central Mall area in 1965 and the Director of the National Park Service believes that this number will substantially increase in the near future [Government and Deft. Ex. 4, p. 1]. The present parking and traffic circulation facilities within the central Mall area are already, according to the Director, taxed to the maximum. The Director also concluded that there is an ever increasing need to provide interpretive services to visitors consisting of a well-organized, accurate, interesting, and intelligible information program concerning the many points of interest in and around the Mall area [Tr., April 26, 1967, 77,

testimony of George B. Hartzog, Jr., Director of the National Park Service].

In 1966, the Park Service instituted a six-week trial of an interpretive service in the central Mall area, using open-air vehicles. The Director concluded that the test indicated "overwhelming approval for the interpretive concept" and that proper park management required the initiation of a regular interpretive service [Affidavit of George B. Hartzog, Jr., pp. 4, 6].

The Park Service has developed a long-range master plan for the Mall which has been approved in concept by the National Capital Planning Commission. The plan contemplates placing parking and bisecting streets underground and converting the central Mall into a vast open area reserved for pedestrians. An integral part of the plan calls for the elimination of all vehicular traffic other than trackless trains (trams) of the type specified by the Contract. Thereafter, the Secretary of Interior (Secretary) acting pursuant to the authority contained in 16 U.S.C. §§ 1-3, 17b, 20, 20a-g, and in D. C. Code § 8-108, issued a prospectus inviting proposals from private firms to enter into a contract to provide visitor interpretive services.

Universal and D. C. Transit were among the firms submitting proposals.

Universal won the award from the Secretary. Prior to entering into the formal agreement Universal was informed by the Department of the Interior that the Secretary had exclusive charge and control over the central Mall area, and that the interpretive service required by the Contract would be subject only to the requirements imposed by the United States of Amer-

ica. On March 27, 1967, Universal executed the Contract, but since the term of the Contract extended through December 31, 1977, the Contract was submitted to Congress for a 60-day waiting period, after which time it was executed on behalf of the United States and became a mutually binding agreement.¹

In the Contract the Secretary authorized the concessioner Universal:

"... to establish, maintain, and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the city of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, along such routes as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules, and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary." (Contract, §2(a)).

The Contract requires Universal to station guides at eleven designated points of national interest along the Mall. Such guides are required to wear uniforms approved by the Park Service and to be thoroughly

¹The United States and Universal also entered into an interim agreement dated March 24, 1967 in order to permit the initiation of the interpretive service during spring 1967; the interim agreement stated that it would expire no later than June 30, 1967.

conversant with the geography and history of the nation's capital. The stationary guides will be prepared to furnish information about the city and its facilities to all persons regardless of whether they have paid for the visitors' interpretive shuttle service [District Court opinion].

Universal is required by the Contract to operate a mobile interpretive service utilizing trams of a design approved by the Secretary (each tram is to be manned by a tour guide and by a driver). The service will be conducted entirely on land owned by the United States in the central Mall area of the National Capital Parks.² Each tram will bear the insignia of the National Park Service. As the tram proceeds through the Mall, the guides present a narration to the visitors. The Contract states that the interpretive function is a prime consideration thereunder (Contract, §6(c)).

It is expected that two basic types of interpretive service will be provided. First, Universal must furnish a "round trip" interpretive tour originating and terminating at the same point with no passengers em-

²The interpretive trams may cross some streets administered by the District of Columbia such as 14th Street, 7th Street and 4th Street [Tr. April 26, 1967, 93]. However, ultimate control of such streets bisecting the Mall area is vested in the Director of the National Park Service by D.C. Code §8-144. It is also possible that, during temporary construction of the Inner Loop in the vicinity of the Grant Memorial, the interpretive trams may proceed briefly along 2nd Street, which is administered by the District of Columbia. The Director of the National Park Service has authority to arrange for access along such streets by reason of D.C. Code §8-135, by arranging a transfer of jurisdiction through a simple exchange of letters between the Director of the National Park Service and the Commissioners of the District of Columbia. Such arrangements are now being made [Tr. April 26, 1967, 95].

barking or debarking en route (Contract, §2(a)). Second, the Contract contemplates that Universal may, with the approval of the Secretary, provide an interpretive shuttle service whereby passengers can commence the narrated tour, proceed to a given point of interest, disembark, remain at that point of interest and later join another tram at that point and continue the narrated tour.

The Contract provides for close and continuous regulation by the Secretary of every phase of the activities of Universal; for example, the Secretary controls both the type and number of mobile units to be utilized, rates, routes, hours of service, schedule of trips, and content of narration. The Secretary has assigned government lands and government improvements to be utilized by Universal in connection with operations. Universal agrees to pay a fee to the United States based on Universal's gross receipts from the interpretive service. The Secretary prescribes the manner in which the accounting records of Universal shall be maintained; both the Secretary and the Comptroller General of the United States have the right to examine Universal's books. The Contract requires that Universal carry casualty and liability policies and that the United States of America be named as co-insured in liability policies. The United States is given a first lien on all assets of Universal utilized in the visitor's interpretive shuttle service.

D. C. Transit now operates some fixed route mass transit through the Mall with the specific permission of the Secretary of the Interior [Government and Deft. Ex. 1, 2]. D. C. Transit and other intervening sightseeing companies, as well as others similarly situated, are now operating chartered sightseeing services

through the Mall at the sufferance of the Secretary [Tr., April 26, 1967, 84-85, 106]. The Director of the Park Service testified that the Park Service does not plan to interfere with existing sightseeing bus operations that go through the Mall [Tr., April 26, 1967, 84], and indeed the Park Service plans to increase surface parking spaces available for sightseeing busses on the central Mall after the interpretive service is in operation [Tr., April 26, 1967, 108].

At such time as vehicular traffic is eliminated from the central Mall, the Park Service intends to provide ample underground parking for busses operated by charter sightseeing companies [Tr., April 26, 1967, 80, 85, 107-108].

Almost immediately after the Department of the Interior announced the award of a contract to Universal, WMATC notified Universal of its contention that Universal could not lawfully operate under the Contract unless and until Universal obtained a certificate of convenience and necessity from WMATC. When Universal responded that on the basis of the advice given to it by the Department of the Interior, it would not apply for such a certificate, WMATC commenced this action in the District Court; during the pendency of this action, Universal has not operated under the Contract. Each of the intervening plaintiffs joined in WMATC's contention that Universal cannot lawfully operate under the Contract without obtaining a certificate of convenience and necessity from WMATC and, in addition, D. C.

Transit urged that Section 3 of its Franchise, Act of July 24, 1956, 70 Stat. 598, protected it from competition unless the competitor obtained a certificate from WMATC.

In an extensive opinion dismissing plaintiffs' complaints, the District Court found that the interpretive service contracted for by the Secretary was to be conducted within an enclave over which the Secretary has exclusive jurisdiction and is therefore not transportation within the means of the WMATC Compact. Alternatively, the District Court held that even if WMATC had jurisdiction over services to be performed in the central Mall area, the services to be performed by Universal were "transportation by the Federal Government" and therefore expressly exempt from the provisions of the Compact. The District Court also found that the proposed interpretative tour service did not violate the protection accorded to D. C. Transit in its Franchise.

In reversing the District Court, the Court of Appeals did not hand down an opinion. Its order merely recited the conclusion that,

"The various relevant statutory provisions, construed in relation one to the other, especially in view of the physical location of the Mall in the Metropolitan area of the District of Columbia, do not afford authority to the appellee Universal Interpretative Shuttle Corporation validly to engage in such transportation for hire in the Mall area as is contemplated by the [Contract] . . . without a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission authorizing such transportation"

Reasons for Granting the Writ.

The immediate effect of the decision of the Court of Appeals is to hold that WMATC, a local agency representing the parochial interests of the immediate area, can veto the determination of the executive branch of the Federal Government to provide a new and meaningful interpretive service on the central Mall and to realize revenues from such a service. The drastic restrictions which such a decision imposes upon the Federal Government concerning a geographical area over which the Federal Government has, by congressional direction, exercised exclusive jurisdiction, particularly without the benefit of an opinion, fully justifies review by this Court. A review is further warranted by the unique nature of the Mall. The Mall is, in a very real sense, the physical center of our National Government and as such its future is of concern to all the people of the United States. The decision of the Court of Appeals has far reaching negative implications for the present plans of the Federal Government for the development and enhancement of the Mall.

1. WMATC does not have jurisdiction to regulate activities directly authorized by the Secretary in the central Mall area.

By the Act of July 1, 1898, 30 Stat. 570 as amended, D. C. Code § 8-108, Congress specifically provided that:

"The park system of the District of Columbia is placed under the *exclusive charge and control* of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States." (Emphasis supplied).

The Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. §§ 1-3, provides that the Director of the Park Services "shall, under the direction of the Secretary of the Interior, have the *supervision, management and control* of the several national parks and national monuments," and that "the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service" (Emphasis supplied.)

The Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. §17b, provides that

"The Secretary of the Interior is authorized to contract for services or other accommodations provided in the National Parks and National Monuments for the public under Contract with the Department of the Interior, as may be required in the administration of the National Park Service, at rates approved by him for the furnishing of such services or accommodations to the Government" (Emphasis supplied).

In 1965 after re-examining the authority of the Secretary Congress specifically found that the

"preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use

It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of

the national park area on which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas." 16 U.S.C. §20.

Congress then authorized the Secretary to make contracts with concessioners and provided for detailed regulation of concessioners. 16 U.S.C. §20a-g.⁸

Prior to the Compact the Secretary had exclusive jurisdiction over all activities, including transportation, within the National Park areas in the District of Columbia. Neither the Public Utilities Commission (PUC) which regulated transportation for hire within the District of Columbia nor the Interstate Commerce Commission (ICC) ever asserted jurisdiction over the Mall area, within the District of Columbia in derogation of the exclusive charge and control granted the Secretary over National Parks. See Interstate Commerce Act, Act of August 9, 1935, 49 Stat. 544, as amended, 49 U.S.C. §§303(b)(4), 309(a); District of Columbia Traffic Act of 1925, 43 Stat. 1119 as amended, Act of February 27, 1931, 46 Stat. 1424.

Approval of WMATC's claim of jurisdiction creates an irreconcilable conflict with the regulatory authority vested in the Secretary. If Universal must obtain a certificate from WMATC before being permitted to operate under the Contract, by refusing the certificate WMATC would completely thwart the Secretary's

⁸The authority of the Secretary to enter into a Contract to provide for transportation services, was upheld in *United States v. Gray Line Water Tours of Charleston*, 311 F. 2d 779, 781 (4th Cir. 1962). Furthermore the Contract was sent to Congress for 60 days pursuant to 16 U.S.C. §17b(1) prior to being executed by the Secretary and no adverse congressional comment was received.

"management and control" of the central Mall area. Even if WMATC were to issue a certificate Universal would be subjected to, at the very least, a complete duplication of regulation, and the Secretary's control over all phases of the operation would be superseded by WMATC's detailed regulatory control. It takes very little imagination to foresee the difficulties which the Secretary would encounter in the administration of the Mall area if such critical matters as routing and hours of operation were not within his control. Furthermore, if WMATC has jurisdiction over Universal's operations under the Contract, WMATC, rather than the Secretary, would regulate Universal's rate structure which of course is one of the fundamental elements in the Contract, taking into account as it does factors (such as the uncompensated services provided by Universal and the fees to be paid by Universal to the United States) which are wholly outside the concern of WMATC.

WMATC has contended that its jurisdiction over Universal's operations under the Contract is a result of the grant of affirmative regulatory powers to WMATC under the Compact. The central Mall is a shrine for the nation's two hundred million people and long before ratifying the Compact, Congress committed the responsibility for all aspects of the central Mall's care and utilization to the Secretary as a representative of the National Government. Implicit in WMATC's contention is that Congress intended to strip the Secretary and the National Government of exclusive control of the central Mall area and to inject into the management of that area WMATC, an essentially local body consisting of three (3) men representing, respectively, the

District of Columbia, and the States of Maryland and Virginia. It should take clear and convincing evidence that Congress, in approving a compact to which United States is not itself a party, intended such a drastic realignment of powers previously conferred upon the executive department. Such evidence is totally lacking.

No specific provision of the Compact in support of this contention has ever been cited and the legislative history overwhelmingly refutes such a contention. Prior to approving the Compact, Congress considered it at length and the point was repeatedly made that the Compact would not create any new regulatory powers but would merely effect the transfer of jurisdiction to a single regulatory body, WMATC, from the four independent regulatory bodies then regulating transportation for hire in the Washington Metropolitan area. See *e.g.*, H. Comm. on Jud., 86 Cong., 2d Sess. (1960), Pt. 1, p. 104, Pt. 2, pp. 118, 248.

WMATC has relied upon the general suspension of laws provisions of the Compact and enabling legislation, Compact, Article VIII, Article XII §20(a); D.C. Code §1-1412, as its basis for contending that, *sub silentio*, the Secretary was deprived of his exclusive jurisdiction over transportation services within the National Park areas in the Washington Metropolitan area. This argument ignores the fact that Congress, in approving the Compact, was very aware of the laws it was suspending. The Joint Congressional Committee considering the Compact set out in chart form the

existing federal laws that were to be suspended either in whole or in part by the Compact. 86th Cong., 2nd Sess., H. Rep. 1621, pp. 29-30. The statutes listed therein include parts of 49 U.S. Code, Titles 40, 42, and 44 of the D.C. Code. *Ibid.* Totally absent from this chart is any reference to suspension or limitation of those statutes providing that the District of Columbia National Park areas are within the exclusive jurisdiction of the Secretary.

Section 3 of the Act of September 15, 1960, 74 Stat. 1050, D.C. Code §1-1412, provides specifically that the Compact shall not affect the "normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic, use of streets, highways, and other vehicular facilities." The Court of Appeals either ignored the foregoing or concluded that the reference to "police powers" amounted to a limitation on the existing authority and responsibilities of the Park Service. Although Congress did not include a broader reservation proposed by the Director of the Park Service, 86th Cong., 2nd Sess., H. Rep. 1621, p. 49, there is no reason why the term "police powers" should not be interpreted as including the full scope of the pre-existing authority delegated by Congress to an executive agency to make rules and regulations relating to property of the United States at least insofar as such authority relates to the operation of vehicles. As the court said

in *Tennessee v. United States*, 256 F. 2d 244, 258 (6th Cir., 1958):

Since Congress has the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Constitution, art. 4, §3, cl. 2), this power of the United States, analogous to the police power of a state, is clearly applicable where the lands of the United States are concerned.

See also *Robbins v. United States*, 284 Fed. 39, 45 (8th Cir. 1922). Since the Secretary had the authority, prior to the enactment of the Compact, to authorize without the approval of the PUC or the ICC, a service involving vehicles of the type provided for under the Contract, the police power reservation in the Compact has expressly preserved that authority.

2. Even if Congress by consenting to the Compact intended to impose a limitation upon the Secretary's exclusive control over the central Mall area, the service to be provided by Universal under the Contract is nevertheless not subject to WMATC jurisdiction.

(a) The Compact covers "transportation for hire by any carrier of persons between any points in the Metropolitan District. . . ." It is obvious from the circumstances surrounding the enactment of the Compact that the word "transportation" as used in the Compact is not descriptive of Universal's services under the Contract.

In early 1954 a joint commission of representatives from Maryland, Virginia and the District of Columbia was established to consider:

"(1) the adequacy of present passenger carrier services in the Washington Metropolitan area, and

(2) whether joint action . . . is necessary or desirable in connection with the regulation of passenger carrier facilities operation in such area.”
86th Cong., 2nd Sess., H. Rep. 1621, p. 4.

In 1955, the 84th Congress appropriated funds to enable the National Capital Planning Commission and the National Capital Regional Planning Council:

“to jointly conduct a survey of the present and future mass transportation needs of the National Capital region” *Ibid.*

These studies revealed many problems in commuter service in the Washington Metropolitan area and adoption of an interstate compact was recommended to alleviate these mass transit problems. The Compact was negotiated and became effective by the congressional consent given in the Act of September 15, 1960, 74 Stat. 1031, D.C. Code §§1-1410 to 1-1416.

That the purpose of the Compact is to resolve the many commuter and mass transit problems confronting the Washington Metropolitan area is emphasized by the Preamble to the Compact which states:

“Whereas the regulation of *mass transit service* in the metropolitan area of Washington, District of Columbia, is divided among the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission; and

“Whereas such divided regulatory responsibility is not conducive to the *development of an adequate system of mass transit for the entire metropolitan area*, which is in fact a single integrated, urban community” (Emphasis supplied).

The service to be provided by Universal under the Contract is distinguishable from mass transit or commuter services. Although Universal will carry persons around the central Mall area, such movement is incidental to the primary purpose of the United States in entering into the Contract of bringing visitors into meaningful contact with points of interest located in the central Mall area and providing the visitors with information concerning these points. Thus, Universal will furnish stationary guides at eleven designated points who are to be prepared to supply information to all visitors regardless of whether they have paid for the interpretive shuttle service. The vehicles will be operated on areas under the control of the Secretary and not on public streets or highways as is required by Article XII, §2(b) of the Compact. Universal's service will not in any way compete with forms of mass transit in bringing persons from outside the central Mall area into that area.⁴

(b) Section 1(a)(2) of Article XII of the Compact excepts "transportation by the Federal Government". As a concessioner, Universal will be providing a service which the Government could, and has in the past on a temporary basis, directly provided. WMATC has acknowledged that if the service were provided by vehicles owned and operated by the Park Service, the operation would be exempt under the aforementioned section of the Compact; but WMATC contends that what the

⁴The service to be provided under the Contract is distinguishable from sightseeing and charter services which operate not only within the confines of the National Parks but also pick persons up outside the National Parks and generally carry them for large distances on public streets and highways; such sightseeing services clearly compete with modes of mass transportation in the movement of persons within the Metropolitan District.

Federal Government can do directly, it cannot do indirectly through its own concessioner. The Court of Appeals acceptance of this position is clearly erroneous. Universal's day to day activities will be so intertwined with those of the Park Service as to be virtually indistinguishable; indeed, the trams will bear a Park Service emblem, the Universal personnel will wear uniforms approved by the Park Service, and the United States will share directly in Universal's gross revenues from the service. In every meaningful sense, any interference by WMATC with Universal's activities under the Contract would constitute a direct interference with the Federal Government in the discharge of its management responsibilities over the National Parks. Under these circumstances, for purposes of applying the Compact, the service to be provided by Universal is an activity of the Federal Government, and accordingly, exempt from WMATC's jurisdiction. Cf., *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956); *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18, 22 (1940).

(c) The Compact only applies to "transportation for hire by any carrier of persons *between any points . . .*" (Emphasis supplied). Section 2(a) of the Contract contemplates

"visitor interpretive service originating and terminating *at the same point*, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary. . . ." (Emphasis supplied).

Thus, the primary service to be offered by Universal does not fall within the jurisdictional requirement of the Compact, namely, that there be transportation "be-

tween any points". This very significant fact was apparently overlooked by the Court of Appeals which stated that Universal does not have authority "to engage in such transportation for hire in the Mall area as is contemplated by the contract" without obtaining a permit from WMATC.

3. D. C. Transit has raised a contention that it is protected from competition by Universal by virtue of Section 3 of its Franchise, Act of July 24, 1956, 70 Stat. 598, which provides, in essence, that no competitive railway or bus line for the transportation of passengers which runs over a given route on a fixed schedule, shall be established in the District of Columbia without a certificate being issued on the grounds that the competitive line is necessary for the convenience of the public. Since the Court of Appeals held that Universal's service under the Contract is subject to the certification requirements of WMATC, it was unnecessary for that court to consider D.C. Transit's independent contention. If this Court grants certiorari and thereafter ultimately finds that Universal's activities under the Contract are not subject to WMATC's jurisdiction as conferred by the Compact, petitioner requests this Court to dispose of D.C. Transit's contention in order to avoid any further delay in the institution of service under the Contract. The lack of merit in D. C. Transit's argument based upon its Franchise is readily apparent since, among other things, due to the Secretary's right under the Contract to change routes, rates, and schedules at any time, the service to be provided by Universal is not "over a given route on a fixed schedule".

Conclusion.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted, -

JEFFREY L. NAGIN,
ALLEN E. SUSMAN,

Attorneys for Petitioner.

Of Counsel,

ROSENFELD, MEYER & SUSMAN.

APPENDIX A.

Order.

United States Court of Appeals, for the District of Columbia Circuit, September Term, 1966, Civil 793-67.

Washington Metropolitan Area Transit Commission, Appellant, No. 20,975.

Washington Sightseeing Tours, Inc., Appellant, No. 20,976.

Blue Lines, Inc., and White House Sightseeing Corp., Appellants, No. 20,977.

D.C. Transit System, Inc., Appellant v. Universal Interpretive Shuttle Corporation, (a California corporation), Appellee, No. 20,978.

Before: Fahy, Senior Circuit Judge, and Danaher and Robinson, Circuit Judges, in Chambers.

Whereas a majority of the court are of the opinion that the various relevant statutory provisions, construed in relation one to the other, especially in view of the physical location of the Mall in the Metropolitan area of the District of Columbia, do not afford authority to the appellee Universal Interpretive Shuttle Corporation validly to engage in such transportation for hire in the Mall area as is contemplated by the contract between the Secretary of the Interior and appellee dated March 17, 1967, more fully described in the complaint, without a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission authorizing such transportation, and

Whereas it is deemed that the interests of the parties and of the public would be better served by this prompt disposition of the appeals rather than to de-

lay decision pending the formulation and issuance of elaborating opinions, though each member of the court reserves the right to file later, in opinion or statement form, his more detailed reasons for his position.

The order of the District Court of the 1st day of May, 1967, dismissing the complaint and denying the petition for injunction and declaratory relief is reversed, and the cause is remanded so that appropriate further proceedings and relief consistent with this order may be granted.

It is so ordered.

Circuit Judge Robinson, being of opinion the order of the District Court should be affirmed, dissents.

APPENDIX B.

Opinion and Order.

United States District Court for the District of Columbia.

Washington Metropolitan Area Transit Commission, Plaintiff, and D. C. Transit System, Inc. Washington Sightseeing Tours, Inc., Blue Lines, Inc., White House Sightseeing Corp. Plaintiff-Intervenors v. Universal Interpretive Shuttle Corporation (a California corporation) Defendant. Civil Action No. 793-67.

1. *The Proceedings*

This is an action for an injunction and for declaratory relief.

The action was instituted by the Washington Metropolitan Area Transit Commission (hereinafter WMATC) to enjoin the defendant Universal Interpretive Shuttle Corporation (hereinafter Universal) from operating a so-called "Visitor Interpretive Shuttle Service" in the Mall area of the City of Washington, D. C. in its capacity as a concessionaire of the National Park Service of the Department of the Interior.

The D. C. Transit, Inc. (hereinafter D.C. Transit), Washington Sightseeing Tours, Inc., Blue Lines, Inc. and White House Sightseeing Corp. have intervened as parties plaintiff.

The United States was granted leave to file a representation of interest to present evidence, file briefs, and otherwise take part in the proceedings.

The hearing on an application for a preliminary injunction was consolidated with a hearing on the merits

pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. The consolidated hearing was conducted April 25 and 26, 1967.

2. *The Fact Situation*

The central Mall area of the City of Washington is included within the National Park System which is administered by the National Park Service of the Department of the Interior. The Mall is bounded on the north by the White House, on the east by the Grant Memorial, on the south by the Jefferson Memorial, and on the west by the Lincoln Memorial. Because it contains and is flanked by many points of historical, educational, aesthetic and patriotic importance it is a focal point of tourist interest in the Federal City.

It has been estimated that the number of visitors to the Mall area exceeded 12 million in 1965. The National Park Service expects the number to increase progressively in the coming years.

To increase the enjoyment and appreciation of the people visiting the Mall area, in the Fall of 1966 the Secretary of the Interior instituted, on an experimental basis, a so-called "interpretive shuttle service" to operate within the Mall area and to move visitors through the Mall to the various points of interest. The experiment was deemed a success, and accordingly the Secretary decided to institute the service on a more permanent basis. To that end he prepared a prospectus (Washington Sightseeing Ex. 1) and solicited proposals from various private interests thought to be capable of supplying the type of service contemplated. Among the private interests invited to submit proposals, and which did submit proposals, was the intervenor D.C. Transit, and the defendant Universal.

Universal won the award, and the Secretary, acting through his Director of National Parks, thereupon negotiated a contract with Universal (U.S. Ex. 4). The contract bears date of March 17, 1967. It covers service to begin in 1967 and extending through December 31, 1967. But since a contract of each duration—roughly 10 years—is subject to a 60-day Congressional waiting period, the Director of the National Park Service entered into an interim agreement which would not require a Congressional waiting period in order to initiate the service as soon as possible to meet the demands of the tourist season of Spring 1967. By the interim agreement it was stipulated that the shuttle service would commence on May 1, 1967.

Section 2 of the basic contract authorizes the concessionaire Universal

“[T]o establish, maintain and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the City of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary.”

The Contract requires Universal to station guides, wearing uniforms prescribed by the National Park Service, at designated points of national interest. These

stationary guides must be prepared to furnish information about the City and its facilities to any person regardless of whether they have paid for the visitors interpretive shuttle service.

The concessionaire is also required to operate trackless trains ("trams") bearing the National Park Service identification along a route lying wholly within the boundaries of the Mall area of National Capital Region, National Park Service, approximating 6.5 miles in total length.¹ Each tram is to be manned by a driver and tour guide wearing the uniforms prescribed by the National Park Service. As the tram proceeds along the prescribed route the guides are to give a narration to the visitors, the contents of which must be approved in advance by the Director of the National Parks. Each

¹The exact route to be followed by the Interpretive Shuttle Service is within the control of the Secretary. But as required by Section 2a of the Contract it will be "within the Mall area of the City of Washington." On the basis of the experiment conducted in 1966 it is generally assumed that the starting and ending point of the shuttle service will be in the Monument grounds of the shuttle service will be in the Monument grounds and that it will proceed as follows: East out of the Monument grounds through the Mall via Jefferson and Adams Drives to 2nd Street; briefly north on 2nd Street to connect with Washington Drive; west through the Mall by Washington and Madison Drives to the Monument grounds; south through Park land, on the west side of the Bureau of Engraving and Printing; then continuing to and encircling the Jefferson Memorial; thereafter by way of Ohio Drive and 23rd Street to Lincoln Memorial; passing between the Reflecting Pool and the Memorial; then via Beacon Drive to Constitution Avenue and east to the Ellipse; circling the Ellipse and returning through the Monument grounds to the starting point. This route according to the official map which was introduced as U. S. Exhibit No. 6 will require the vehicles to cross 14th, 7th, and 4th Streets and proceed briefly on 2nd Street. Otherwise the tour will be entirely within the Park grounds. It should be noted, however, that Title 8, Section 144 of the D. C. Code specifically authorizes the passage by Park authorities over the D. C. public streets for purposes of going from one section of Park land to another.

tram is required to stop at 11 designated points of interest.

Two basic types of interpretive tour service are contemplated by the Contract: (1) a "round trip" interpretive tour originating and terminating at the same point, and (2) a service whereby passengers can commence the narrated tour, proceed to a given point of interest, debark, remain at that point of interest and later join another tram at that point and continue the narrated tour. The interpretive function is by the terms of the contract "a prime consideration" (Sec. 6(c)). Every phase of the activities of Universal is to be under close and continuous regulation by the National Park Service, including the type and number of mobile units to be utilized, rates, routes, hours of service, days of service, schedule of trips, and content of narration.

The Secretary prescribes the manner in which the accounting records of Universal shall be maintained. Both the Secretary and the Comptroller General of the United States have access to and the right to examine any of the pertinent books, documents and records of Universal. Universal will be required to carry insurance in amounts approved by the Secretary against losses by fire, public liability, employee liability and other hazards. The United States of America must be named as co-insured in all liability policies. Performance bonds may be required by the Secretary in his discretion. The United States will have a first lien on all assets of Universal utilized in the visitors interpretive shuttle service.

Shortly after the execution of the interim agreement contemplating the initiation of service on May 1, 1967, the plaintiff WMATC notified Universal that the pro-

posed service would be subject to the jurisdiction of WMATC and that a certificate of necessity and convenience would have to be awarded by WMATC before Universal could operate.

Universal replied in part as follows:

"Prior to entering into the contract of March 24, 1967, we were advised that in the opinion of the Department of the Interior the Interpretive tour service required by the contract would be subject only to the requirements imposed by the United States of America, acting in this behalf by the Secretary of the Interior through the Director of the National Park Service. Therefore, Universal Interpretive Shuttle Corporation respectfully declines to apply for a certificate of convenience and necessity from the Washington Metropolitan Area Transit Commission at this time."

This action followed.

3. *The Respective Claims*

The claims of the respective parties are briefly these: WMATC asserts that under the terms of the Compact by which it was created, no one not specifically excepted by the terms of the Compact may engage in the transport of passengers for hire within the Metropolitan area of Washington without first obtaining a certificate of necessity and convenience from WMATC; that the National Park areas of the District of Columbia are within the geographical area, controlled transportation-wise by WMATC; that the intended operations of the defendant as a concessionaire of the National Park Service are not exempted by terms of the Compact; and that the defendant accordingly must seek

a certificate of convenience and necessity from WMATC.

D. C. Transit adopts the WMATC argument, and additionally asserts that the proposed service by Universal will constitute transportation of persons for hire on a scheduled service over a fixed route which will traverse portions of D. C. Transit's regular routes and substantially duplicate its regular services; that such duplication of service will deprive D. C. Transit of substantial revenues; that such services will be derogatory of the protection afforded by the franchise granted to D. C. Transit by Congress (70 Stat. 598, 1956). They also assert that they run charter and sightseeing services which will be substantially affected by the projected operation.

The other intervenors do not operate regularly scheduled services. They operate under certificates of convenience and necessity from WMATC for irregular service such as charter and sightseeing. Under these certificates they run sightseeing trips to and through the Mall and to the various points of interest. They too adopt the position of WMATC and assert possible loss of revenue as a result of the operation of the prospective services.

The defendant Universal and the United States take the position that the Mall is a National Park area under the exclusive jurisdiction of the Department of Interior; that the Compact did not effect a cession of jurisdiction within that area to WMATC; that the contemplated service is not embraced within the terms of the Compact; and that in any event the services proposed to be rendered will constitute a governmental operation, which is exempt from the coverage of the Compact by express exception.

4. *Discussion*

There has never been any question, and it is not disputed in this case, but that the Secretary of Interior by authority of Congress has been vested with exclusive jurisdiction over the maintenance and operation of all national parks and monuments (16 U.S.C. 1).

This exclusivity of jurisdiction has been specifically extended to any national park area within the District of Columbia by D.C. Code 8-108 et seq.

Further, in the maintenance and operations of the Park System the Secretary of Interior has been accorded the power to contract for services and accommodations in the Park areas and to set the rates therefor (16 U.S.C. 17(b)). And, in that connection, the Secretary has been directed to encourage private concessionaires to provide the services and facilities when practicable (16 U.S.C. 20(a)).

WMATC would challenge this exclusive jurisdiction urging in substance that when the three political bodies—the States of Virginia and Maryland and the District of Columbia—entered into a Compact creating WMATC, and when Congress consented to that Compact and suspended the application of certain U. S. Laws which theretofore had been applicable to the transit situation, exclusive jurisdiction was vested, in WMATC over any and all “transportation for hire” in the Metropolitan area, even interpretive shuttle services in the park areas, in derogation of the jurisdiction of the Secretary of Interior.

Analysis of the consent legislation and of the Compact and underlying purposes of the Compact will not support this position.

The provisions of the Compact which are relevant to the issues in this case are these:

“Title II

Article XII

“1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

* * * * *

“(2) Transportation by the Federal government, the signatories hereto, or any political subdivision thereof;

* * * * *

“2. As used in this Act—

(a) The term ‘carrier’ means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.

* * * * *

“4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation;”

A copy of the pertinent provisions of the consent legislation (O.L. 86-794, Sept. 15, 1960) is attached hereto as Appendix A.

It will be noted that in the preamble to the consent legislation there are not less than four references to “mass transit” within the Metropolitan area of Wash-

ington. It will be further noted that in the enacting language of Section 3 by which Congress suspended the applicability of certain laws of the United States, it suspended only those laws which were inconsistent with and in duplication of the provisions of the Compact. And still further it will be noted that the suspension applied to only such laws as related to or affected transportation *under the Compact*. It then went on to provide that

"[N]othing in this Act or in the Compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities."

All of the foregoing statutory material must be viewed and construed in the light of the circumstances under which the Compact was brought into play. The following excerpt from House Report No. 1621, accompanying House Joint Resolution 402 succinctly states the situation which existed and which was projected to exist justifying the need for the Compact (pp. 5-6).

"According to testimony adduced at the hearings the Washington Metropolitan area has experienced a rapid rate of growth in the post-war years (hearings cited *supra*, pt. 1, pp. 47-48). Except for relatively moderate growth in the District of Columbia, this growth has occurred in the Virginia and Maryland counties. This population growth has been accompanied by a physical expansion of the urbanized area. The increase in the

number of automobiles has been even at a greater rate. It is estimated that the number of automobiles in the metropolitan area doubled in the 7-year period between 1948 and 1955 (transportation plan, National Capital Region (1959) p. 24). The growth in population, automobiles, and physical area is continuing.

"These changes have been accompanied by an increasing dependence on the private automobile and a decreasing patronage of public transit (transportation plan, cited supra pp. 12, 24). As a result, traffic has become a major problem of overgrowing proportions. At the present time, the population of the area stands at slightly more than 2 million, whereas it was approximately 1,850,000 in 1955 (transportation plan, supra pp. 2, 16). It is estimated that the population will increase to 2,400,000 by 1965, and 3 million by 1980 (transportation plan, supra p. 16). This projected growth, superimposed upon the present congestion of traffic, clearly demonstrates the need for remedial action.

"After 4 years of study and work, the National Capital Planning Commission and the National Capital Regional Planning Council, on July 1, 1959, issued its transportation plan for the National Capital region. This plan contemplates a balanced system of transportation providing for private automobile traffic and a system of mass transit consisting of a combination of rail and express bus service.

"The transportation plan proposes that the development of the transportation system take place

in three stages. As the first step, then plan recommends that the immediate action be taken to improve the present public transit service by centralizing regulation of existing privately owned transit on a regional basis to overcome the barriers imposed by jurisdictional boundary lines. This is the function of the instant compact.

* * * * *

"The transportation plan points out that there is no existing machinery of Government capable of handling on a regional basis the problems presented in each of the three stages of development and that adequate governmental machinery must be brought into being. The transportation plan recommends the Washington metropolitan area transit regulation compact as a suitable means of handling the first stage problem of improving the present public transit service.

* * * * *

"Thus, the function of the instant compact is to improve transit service offered by the existing privately owned transit companies through coordinated regulation and improvement of traffic conditions on a regional basis. The transportation plan does not require the elimination of privately owned and operated carriers, but anticipates their continued existence with the possibility that such carriers may enter into agreements with the subsequent proprietary agencies to operate the publicly owned facilities. Thus, the regulatory functions to be performed by the subject compact are not only required presently, but will be required as long as private transit continues to operate in the metropolitan area."

It is obvious from the foregoing material that when the Compact was brought into being it was designed primarily to regulate "mass transit" of commuter traffic between the highly urbanized neighboring areas in Maryland and Virginia and the Federal City over the customary public routes generally followed by scheduled bus lines. There is nothing in the Compact or the history of the Compact which would hint that it was intended to limit the exclusive jurisdiction of the Secretary of the Interior to maintain and operate the Park enclave, and if he so desired, to run a tram within the Park enclave for the edification of visitors. The plaintiff and the plaintiff-intervenors carefully emphasize the words "transportation for hire" and "Metropolitan area." They carefully gloss over the references to "mass transit" and the limiting language of the Compact itself confining its impact to transportation "within the meaning of the Compact." It is the opinion of this Court that the transportation to be provided by the Secretary incidental to his educational campaign and to be operated within an enclave over which the Secretary has exclusive jurisdiction is clearly not transportation *under the Compact*.

This opinion is bolstered by the fact that the Court can find no inconsistency with or duplication of the statutes conferring exclusive jurisdiction over the Parks to the Secretary and the Compact regulating mass transit thus requiring a suspension of the statutes under which the Secretary operates. It is interesting to note, and it should be emphasized, that the Report of the previously cited Hearings on the Compact contains a specific list of the laws which the Congress thought would be suspended during the operation of the

Compact, and that list does not contain any law or regulation under which the Secretary has exercised his jurisdiction over the D. C. Park System. Further, it should be noted that under the Compact the WMATC was granted that jurisdiction which had previously been possessed and exercised by the predecessor regulatory agencies operating within the Metropolitan area, namely, the Public Service Commission of Maryland, the Public Utilities Commission of the District of Columbia, the Corporation Commission of Virginia, and the Interstate Commerce Commission of the United States—and none of those entities ever pretended to exercise jurisdiction over the National Park areas.

Accordingly, this Court does not accord the WMATC any jurisdiction to require the Secretary or his agent to apply for a certificate of convenience and necessity for the projected operations.

Even if the Court were to accept the construction of the words "transport" and "transportation for hire" which are placed upon those words by the WMATC and plaintiff-intervenors, or could conceive of the possibility that the WMATC has some jurisdiction over the movement of people within this Government owned enclave, or that the Congress by its action in consenting to this legislation suspended the exclusive authority of the Director of the National Park Service, the Compact by its own terms clearly excepts transportation by the Federal Government. (Article XII, Sec. 2(a)).

"The WMATC contends of course that the operation here proposed will be conducted by the defendant and not by the Government; that for the transportation to be "transportation by the Federal Government" it must

be conducted by the Government directly. As an example of a properly exempted service the WMATC cites the six-week test shuttle service in 1966.

The Supreme Court disposed of this argument in the case of *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18 (1940) when it held that the acts of a contractor, authorized and directed to perform certain services for the Government, were the acts of the Government. In that case the defendant, a government contractor, was sued for damages on the ground that he had in the course of building dikes for the Government on the Missouri River produced erosion and washed away a portion of the plaintiff's land. The Supreme Court held that since the act of the contractor was authorized and directed by the United States it was the act of the United States and so relegated the plaintiff to a suit against the United States in the Court of Claims.

The concessionaire in this case stands on no different footing. Merely because he is a concessionaire and deriving his income from a percentage of the gross intake does not place him in a different class than the usual contractor. One need only read the contract between the Secretary and Universal to appreciate the high degree of control which the Secretary exercises over this concessionaire to remove him from the category of an independent operator. The WMATC argument on this score is accordingly rejected.

We turn now to the D. C. Transit claim that the proposed interpretive tour service would violate the protection guaranteed by Congress in the Act of July 24, 1956 (70 Stat. 598).

D.C. Transit relies upon Section 3 of its franchise which provides:

"No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without prior issuance of a certificate by the Public Utilities Commission of the District of Columbia. . . ."

Initially it is difficult to characterize the proposed operations of the shuttle service as proceeding over "a given route" on a "fixed schedule" when it is apparent from the contract with the defendant Universal that the Secretary has not designated a route, has not designated a schedule, and reserves the right to direct how the shuttle service shall be conducted at any given time. But wholly aside from that observation, it appears to the Court that D. C. Transit is over reaching when it claims Section 3 protection against this shuttle service. In our opinion, what Congress intended to give the D.C. Transit was protection in the operation of its day to day activities in the mass movement of the public of Washington, D. C. over the D. C. streets. What the Secretary is proposing to do is in no wise competitive with that fundamental function of the D.C. Transit System.

Apparently the D. C. Transit does operate some fixed routes from time to time through the Mall area for which it seeks specific permission from the Secretary of the Interior, thus recognizing his absolute control

over operations within that area. Those are bus commuter services rather than sightseeing services and would hardly be deemed competitive with the shuttle service as envisioned by the contract with Universal.

For the most part, however, the D. C. operations within the Mall area are conducted on a charter or sightseeing basis under the separate and unprotected authority of Section 6 of the D. C. Transit franchise, and with the permission of the Secretary of the Interior. This is true also of the other plaintiff-intervenors who operate irregular service on a charter or sightseeing basis. Conceivably and probably a competitive situation will exist to some extent between the sightseeing services offered by the D. C. Transit and the other plaintiff-intervenors and the shuttle system. But neither the D. C. Transit or the plaintiff-intervenors have cause to claim protection from this type of competition. D. C. Transit and the plaintiff-intervenors are permitted to use the Mall area by suffrage and only with the specific consent of the Secretary of the Interior. He could if he saw fit exclude them from the area entirely. *U.S. v. Gray Line Tours of Charleston*, 311 F.2d 779 (4th Cir. 1962). As a matter of fact, it is envisioned in the long range plan for the development of the Mall that all vehicular traffic will be excluded and that all present existing crossroads will become tunnels.

It seems to the Court that parties who enjoy the right to operate their sightseeing services within the

Mall area only at the sufferance of the Secretary of the Interior have no standing whatsoever to ask this Court to enjoin the Secretary from similar operations on his own account.

This opinion constitutes the findings of fact and conclusions of law of the Court.

In the light of such findings and conclusions, it is this 1st day of May, 1967.*

ORDERED that the complaint is dismissed, and it is

FURTHER ORDERED that the petition for an injunction and for declaratory relief is denied.

H. F. Corcoran
Judge

APPENDIX C.

Contract No. 14-10-9-990-27

THIS CONTRACT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Universal Interpretive Shuttle Corporation, a corporation organized and existing under the laws of the State of California; hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, the National Capital Parks area are under the exclusive charge and control of the Director of the National Park Service pursuant to the Act of June 1, 1898, as amended (D.C. Code, Section 8-108); and

WHEREAS, the number of visitors to the central Mall area exceeded twelve million in 1965 and is expected to progressively increase in coming years; and

WHEREAS, the visitor demands require that the Secretary provide increased expert interpretive service in order to properly discharge his obligations to the people of the United States, and it has been determined that such interpretation can best be provided in conjunction with a shuttle service; and

WHEREAS, the United States has not provided such necessary facilities and services and desires the Concessioner to establish and operate the same at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS, the establishment and maintenance of such facilities and services involve a substantial investment of capital and the assumption of the risk of operating loss, and it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a fair profit; and

WHEREAS, it is the intention of the parties that any acts, policies, or decisions of the Secretary under this contract will be consistent with reasonable protection to the Concessioner against loss of its investment and against substantial increase in costs, hazards, and difficulties of its operations hereunder:

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535: 16 U.S.C. 1-3), and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), and other laws supplemental thereto and amendatory thereof, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as follows:

SEC. 1. *Term of Contract.* (a) This contract shall be for and during the term from date of execution through December 31, 1977, except as it may be terminated as herein provided. The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of this contract for such stated periods as the Secretary may deem proper upon written application showing circumstances beyond its control warranting such relief.

(b) The granting of the term hereinbefore specified is conditioned upon the Concessioner furnishing equipment necessary to operate a trackless train system

to provide visitor interpretive shuttle service as required herein, at a cost of not less than \$500,000. Such equipment shall consist of:

Open-air type vehicles, each consisting of a self-propelled unit, with a passenger capacity of not less than 40, and a trailing unit with a capacity of not less than 43 passengers, the two units to be articulated. The equipment shall have the power capacity of speeds up to thirty (30) miles per hour fully loaded, with the capability of starting with a full load on a ten per cent (10%) upward gradient and to maintain a constant climb at a minimum of five (5) miles per hour. All units shall meet Interstate Commerce Commission and District of Columbia safety requirements. Each complete unit shall contain a sound amplification system, shall have solid panels in the passenger area, and an entrance and exit door with a locking device to prevent vehicle from moving while doors are open. The engine shall be equipped with a smog control device. The Concessioner shall submit plans and drawings of the equipment for approval by the Secretary within thirty (30) days after date of execution of this contract. After approval of the plans and drawings, the Concessioner shall provide the Secretary with such assurances that the equipment will be provided as contemplated herein, as the Secretary, in his judgment may require, in the form of a bond in an amount not to exceed the cost of furnishing the necessary equipment, or such other document as may be satisfactory to the Secretary. Sufficient equipment shall be provided to operate three trips per hour within four (4) months from the execution date of this contract, and sufficient

additional equipment to operate a total of twelve (12) trips per hour shall be provided within one year from such execution date.

In the event the Concessioner fails to provide the said equipment within the time allotted therefor, then this contract shall be for and during a term of one year from the date of execution, except as it may be terminated as herein provided. The time for furnishing the equipment will be extended by the Secretary if the Concessioner is subject to such circumstances or hazards beyond its control, which renders meeting the schedule provided herein impossible, unrealistic, or inconsistent with reasonable protection to the Concessioner of its investment, with appropriate extension of the lesser term of this contract, if necessary, as may appear reasonable in the circumstances, and if the said equipment is furnished within such additional period of time as may be granted hereunder, then this contract shall be effective for the full term through December 31, 1977, hereinbefore granted, except as it may be terminated as herein provided.

SEC. 2. *Services Authorized.* (a) The Secretary authorizes the Concessioner, during the term of this contract, to establish, maintain, and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the city of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, along such

routes as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules, and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary. An unreasonable diminution by the Secretary of the services to be performed hereunder shall be deemed to be inconsistent with the Concessioner's reasonable opportunity to make a fair profit.

(b) It is understood and agreed that no other services or facilities are contemplated or authorized hereunder, except that the Concessioner may use temporary equipment approved by the Secretary in initiating service hereunder, pending delivery of the permanent equipment as described in Section 1 hereof, and that the Concessioner will:

(1) Man each vehicle with a driver and an interpreter, the duty of the latter being to provide interpretive information and services to visitors.

(2) Station an interpreter at such stops as may be required by the Secretary to provide information to visitors.

(3) Make such arrangements as may be necessary for administrative offices, equipment storage, shop facilities, and related purposes, provided, however, that the Secretary may permit the Concessioner to use such Government-owned lands and facilities as may be available for these purposes on a temporary basis for which a charge shall be made, pending the Concessioner completing arrangements for the use of other facilities for such purposes.

(4) Maintain standby equipment as may be necessary to maintain the approved schedule of trips in the event of breakdown of the regular equipment.

(5) Maintain emergency facilities and equipment as may be necessary to remove disabled equipment expeditiously from vehicular traffic routes.

SEC. 3. Equipment, Personnel, and Rates. (a)

The Concessioner shall provide, maintain, and operate the said equipment, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with an opportunity to make a fair profit on the total of its operations hereunder.

(b)(1) All rates and prices charged to the public by the Concessioner for services furnished hereunder shall be subject to regulation and approval by the Secretary, not inconsistent with an opportunity for the Concessioner to make a fair profit from the total of its operations hereunder. In determining fair profit for this purpose, consideration shall be given to the rate of return required to encourage the investment of private capital and to justify the risk assumed or the hazard attaching to the enterprise; the cost and current sound value of capital assets used in the operation; the rate of profit on investment and percentage of profit in gross revenue considered normal in the type of business involved; the financial history and

the future prospects of the enterprise; the efficiency of management; and other significant factors.

(2) Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable services furnished outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

SEC. 4. *Land and Improvements.* (a) The Secretary will assign for use by the Concessioner during the term of this contract, such pieces and parcels of land and government improvements as may be, in his judgment, necessary and appropriate for the operations authorized hereunder.

(b) The Secretary shall have the right at any time to enter upon any lands and improvements assigned hereunder for any purpose he may deem reasonably necessary for the administration of the area and the government services therein, but not so as to destroy or unreasonably interfere with the Concessioner's use of such lands or the improvements thereon.

(c) "Government improvements" as used herein, means the buildings, structures, fixtures, equipment, and other improvements upon the lands assigned hereunder, constructed or acquired by

the government and provided by the government for the purposes of this contract.

(d) The Secretary hereby grants to the concessioner the right to occupy and use such government improvements during the term and subject to the conditions of this contract.

(e) The Concessioner shall provide all necessary maintenance and routine repairs of such government improvements, provided that, if a government improvement is damaged by casualty or requires major repair or rebuilding, then the Concessioner shall not be obligated to repair or rebuild such improvement.

SEC. 5. Utilities. The Concessioner shall secure any utilities at its own expense which may be required for its operations hereunder from local available sources.

SEC. 6. Operational Terms and Conditions. The Concessioner shall conduct the operations authorized pursuant to this contract in accordance with the following terms and conditions:

(a) **Equipment.** (1) All equipment used by the Concessioner to provide the Visitor Interpretive Shuttle Service shall be satisfactory to the Secretary. Except as it may be determined by the Secretary, upon the request of the Concessioner, that a smaller unit will be suitable as additional equipment hereunder, the system shall consist of a trackless train type as specified in subsection 1(b) hereof. Any door in the equipment shall be provided with a locking device to prevent moving while doors are open. All vehicles shall meet Inter-

state Commerce Commission and District of Columbia safety requirements. It is understood and agreed, however, that substitute equipment, approved by the Secretary, may be used temporarily in initiating the service to be provided thereunder, and that in emergencies, the Concessioner may substitute temporarily for its regular vehicles, other equipment approved by the Secretary, provided, that such emergency periods shall be limited to ten (10) days unless further extended, in writing, by the Secretary. All equipment shall have the minimum power capacity of speeds up to 30 miles per hour fully loaded, and have the capability of starting with a full load on a ten per cent (10%) upward gradient and maintain a constant climb at a minimum of five (5) miles per hour.

(2) Sufficient equipment shall be furnished to operate three trips per hour within four months after the effective date of this contract, and sufficient additional equipment to operate a minimum of twelve (12) trips per hour, within one year from such date. Such additional equipment as may be necessary to meet the increasing needs of visitors, as determined by the Secretary, shall be furnished.

(3) All equipment used in providing the Visitor Interpretive Shuttle Service shall be maintained in such a manner as to provide full operating efficiency at all times and in a safe, clean, sanitary, and orderly condition, and periodic inspections of the equipment, particularly during periods of heavy use, may be made by the Secretary to assure the equipment is so maintained.

(b) *Schedule of Trips.* Because the Secretary has a continuing responsibility in regard to the Mall area, and pedestrian and vehicular traffic thereon, the hours of operation and number of trips per hour shall be subject to regulation and approval of the Secretary. The Visitor Interpretive Shuttle Service is to be available every day of the year with the exception of Christmas Day. The service is to be available between the hours of 9:00 a.m., and 10:00 p.m., from April 15 through Labor Day of each year, and between the hours of 9:30 a.m., and 5:00 p.m., the remainder of the year.

(c) *Interpretation.* Since the interpretive function is a prime consideration hereunder, it must at all times be of the highest quality and it shall be provided by qualified individuals, one of whom shall accompany each trip. In addition an interpreter shall be stationed at each stop as designated by the Secretary. The information on which the narration is based shall be furnished by the National Park Service, and the script shall be approved by the Secretary in advance.

SEC. 7. *Accounting Records and Reports.* (a) The Concessioner shall maintain such accounting records as may be prescribed by the Secretary. It shall submit annually as soon as possible, but not later than sixty (60) days after the 31st day of December, a report for the preceding year giving such information about its business and operations under this contract as may be prescribed by the Secretary, and such other reports and data as may be required by the Secretary. The Secretary

shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioner, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of the Concessioner and any subconcessioner have access to and the right to examine any of their pertinent books, documents, papers, and records related to this concession contract.

SEC. 8. *Opening Balance Sheet.* Within ninety (90) days of the execution of this contract, the Concessioner shall submit for the approval of the Secretary a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations. That balance sheet shall be accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values. The Secretary shall notify the Concessioner in writing of his approval or disapproval of the balance sheet within six (6) months after its receipt. If the balance sheet, as submitted, is disapproved, the Secretary shall set out in the notification of disapproval his findings upon which the disapproval is based. Within thirty (30) days, the Concessioner shall submit a revised opening balance sheet in

accordance with the findings of the Secretary. If no notice is given within the six (6) months period, the balance sheet, as submitted, shall be considered as having received the approval of the Secretary.

SEC. 9. *Franchise Fee.* (a) The Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year during the term of this contract a franchise fee for the privileges authorized herein, as follows:

(1) An annual fee for the use of any government-owned structures assigned to the Concessioner for the purposes of this contract, based on the value of the government-owned structure or structures provided, pursuant to the schedule, identified as "Exhibit A" attached to and made a part of this contract.

(2) In addition to the foregoing, a further sum equal to three per cent (3%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b)(1) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from the interpretive shuttle service, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the area, and excluding gross receipts from cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank ac-

counts, income from investments, income from activities outside of the area, sales of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, provided that the amount excluded shall not exceed the amount actually due or paid governmental agencies.

(2) The term "gross receipts of subconcessioners" as used in subsection (b)(1) or this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the privileges conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever and the subconcessioners shall report the full amount of all such receipts to the Concessioner within 45 days after the 31st day of December of each year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (b)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed pursuant to the preceding sentence in computing the franchise fee payable to the Secretary as provided for in subsection (1) of this section.

(c) In case of dispute as to the computation of franchise fees to be paid under this contract the determination of the Secretary, consistent with the provisions of this section, shall be final.

(d) Within sixty (60) days after the end of the 3rd, 5th, and 7th years of this contract, at the instance of either party hereto, the amount and character of the franchise fee provided for in subsection (a) of this section may be reconsidered and such franchise fee provisions inserted in lieu thereof as may be agreed upon between the parties hereto in a written supplemental agreement.

Sec. 10. Bond and Lien. The Secretary may, in his discretion require the Concessioner to furnish a bond in such form and in such amount as the Secretary may deem adequate, not in excess of ten thousand dollars (\$10,000). As additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the government shall have at all times the first lien on all assets of the Concessioner within the area. In the event the title to the equipment to be furnished by the concessioner hereunder is vested in the concessioner's parent or affiliated corporation, any such arrangement shall be subject to the prior approval of the secretary. The owner of such equipment shall be required to agree that the equipment will be subject to all rights of the Secretary under this contract as if the equipment were owned by the concessioner, and will execute such further instruments or assurances as may, in the judgment of the Secretary, be necessary in order to effectuate the foregoing. No such arrangement shall be approved by the Secretary unless complete

title, without any outstanding security interests therein, is vested in such parent or affiliated corporation.

SEC. 11. *Termination of Contract by Secretary.*

In case of any substantial default or continued unsatisfactory performance by the Concessioner under this contract, the Secretary may terminate this contract by the following procedure:

(a) The Secretary shall give to the Concessioner written notice specifying the particulars of the alleged default of unsatisfactory performance.

(b) Not less than thirty (30) days after receipt by the Concessioner of such notice, the Secretary shall grant to the Concessioner an opportunity to be heard upon the charges.

(c) Following such opportunity to be heard, the Secretary shall have power to determine whether there has been such a default or unsatisfactory performance.

(d) If the Secretary shall decide that there has been such a default or unsatisfactory performance, he shall give to the Concessioner written notice of such decision specifying the particulars thereof.

(e) If the Concessioner fails or refuses to remedy such default or unsatisfactory performance within such reasonable period of time as may be fixed by the Secretary, then the Secretary may declare this contract terminated upon such date or upon such contingency as he may deem proper to protect the public interest.

SEC. 12. *Compensation for Concessioner's Personal Property.* (a) If for any reason other than

for unsatisfactory condition of equipment, or expiration of the term upon December 31, 1977, or such later date as it may expire, the Concessioner shall cease to be authorized to conduct interpretive shuttle service authorized hereunder, or any of them, and thereafter such operations are to be conducted by a successor, whether a private person or any agency of the government, (1) the Concessioner will sell and transfer to the successor designated by the Secretary all property of the Concessioner used or held for use in connection with such operations; and (2) the Secretary will require such successor, as a condition to the granting of a permit or contract to operate, to purchase from the Concessioner such property, and to pay the Concessioner the fair value thereof. The fair value of merchandise and supplies shall be cost. The fair value of equipment shall be cost, including transportation charges, less straight line depreciation.

(b) To avoid interruption of service to the public upon the termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use for a period not to exceed six (6) months, by a temporary operator designated by the Secretary of the Concessioner's personal property, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall not be obligated to accept

an annual fee for the use of such property of less than the sum of the annual depreciation on such property, plus three per cent (3%) return on the book value of such property.

SEC. 13. *Assignment or Mortgage.* No transfer or assignment by the Concessioner of this contract or of any part thereof or interest therein, directly or indirectly voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the Secretary.

SEC. 14. *Approval of Subconcession Contracts.* All contracts and agreement proposed to be entered into by the Concessioner with respect to the exercise by other of the privileges granted by this contract shall be submitted to the Secretary for his approval prior to the effective date. In the event any such contract or agreement is approved the Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year a sum equal to fifty per cent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 15. *Preferential Right.* (a) The Concessioner is granted a preferential right, not an exclusive or monopolistic right, to provide interpretive services in the Mall area of the character authorized hereunder. The Secretary will request the Concessioner to provide any additional services, of the same character to other centers of interest in the

Federal establishment as the Secretary may consider necessary or desirable. If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional services, the Concessioner shall be allowed sixty (60) days in which to prepare and present its case but, after consideration of the Concessioner's presentation and such hearings or testimony as the Secretary may consider appropriate, the decision of the Secretary in the premises shall be final. If, after such decision, the Concessioner declines or fails within a reasonable time to comply with the request or demand of the Secretary, then the Secretary may, in his discretion, authorize others to provide such services, but only upon terms and conditions substantially equivalent to those offered or allowed to the Concessioner.

(b) Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by others now authorized or permitted by the Secretary to provide service therein for the public. This subsection shall include also the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 16. Insurance. The Concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is customary among prudent operators of similar businesses under comparable circumstances. The United States shall be named as co-insured in all liability policies carried hereunder.

SEC. 17. *Concessioner's Employees.* (a) The Concessioner shall require its employees who come in direct contact with the public to wear a uniform, the type and design of which shall be approved by the Secretary, by which they may be known and distinguished as the employees of said Concessioner.

(b) Personnel selected for operating the equipment must have the capability of performing such duties in a safe and businesslike manner, and must be courteous, attentive, of high character, and well groomed at all times.

(c) Personnel selected to perform interpretive service shall be of the highest quality available to the Concessioner consistent with sound business practices of enterprises of the type authorized hereunder with qualifications satisfactory to the Secretary. They shall be trained in performing the service and thoroughly indoctrinated in the history in order that they may properly interpret the sites and answer questions before being assigned to serve the public. They shall conduct themselves in a creditable manner, and be courteous, patient, mannerly, and well groomed at all times. Their on-the-job performance shall be subject to periodic review by the Secretary.

SEC. 18. *Procurement of Goods, Equipment, and Services.* In computing net profits for any purpose of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from

sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 19. Nondiscrimination. (a) **EMPLOYMENT:** During the performance of this contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, creed, color, ancestry, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner state that all qualified applicants will receive consideration for employment without regard to race, creed, color, ancestry, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided

by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Concessioner will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, That in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

(b) CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions (a)(1) through (7) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

(c) **FACILITIES:** (1) **Definitions:** As used in subsection 19(c) herein: (i) **Concessioner** shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) **facility** shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, creed, color, ancestry, or national origin; (ii) discriminating by segregation or other means against any person because of race, creed, color, ancestry, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection 19(c) herein to be incorporated in all of its contracts or other forms of agreement for use of land made in pursuance of this agreement.

SEC. 20. General Provisions. (a) Operations under this contract shall be subject to all applicable laws of Congress and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated.

(b) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior; and the term shall include his duly authorized representatives.

(c) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at the city of Washington, D. C., this 29th day of May, 1967.

UNITED STATES OF AMERICA

By Hartho L. Bill

Acting Director, National Park Service

UNIVERSAL INTERPRETIVE

SHUTTLE CORPORATION

By Jay S. Stein

Vice President

Date 3/24/67

APPENDIX D.

Statutes Involved

I.

Pertinent parts of the Washington Metropolitan Area Transit Regulation Compact, as approved by Act of September 15, 1960, 74 Stat. 1031, D. C. Code, §1-1410 to 1-1416 (1961 ed.) are:

Public Law 86-794

86th Congress, H. J. Res. 402

September 15, 1960

JOINT RESOLUTION

Granting the consent and approval of Congress for the States of Virginia and Maryland and the District of Columbia to enter into a compact related to the regulation of mass transit in the Washington, District of Columbia metropolitan area, and for other purposes.

Whereas the regulation of mass transit service in the metropolitan area of Washington, District of Columbia, is divided among the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission; and

Whereas such divided regulatory responsibility is not conducive to the development of an adequate system of mass transit for the entire metropolitan area, which is in fact a single integrated, urban community; and

Whereas the Legislatures of Virginia and Maryland and the Board of Commissioners of the District of Columbia in 1954 created a Joint Commission to study, among other things, whether joint action by Maryland, Virginia, and the District of Columbia is necessary or desirable in connection with the regulation of

passenger carrier facilities operating in such areas and the provision of adequate, non-discriminatory and uniform service therein; and

Whereas said Joint Commission has actively participated in the mass transit study authorized by the Congress (Public Law 24 and Public Law 573, Eighty-fourth Congress), and in furtherance thereof said Joint Commission has negotiated the Washington Metropolitan Area Transit Regulation Compact, set forth in full below, providing for the establishment of a single organization as the common agency of the signatories to regulate transit and alleviate traffic congestion, which compact has been enacted by Virginia (ch. 627, 1958 Act of Assembly) and in substantially the same language by Maryland (ch. 613, Acts of General Assembly 1959); and

Whereas said compact adequately protects the national interest in mass transit service in the metropolitan area of the Nation's Capital and properly accommodates the National and State interests in and obligations toward mass transit in the metropolitan area: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the consent and approval of Congress is hereby given to the State of Virginia and Maryland and to the District of Columbia to enter into a compact, substantially as follows, for the regulation and improvement of mass transit in the Washington metropolitan area, which compact, known as the Washington Metropolitan Area Transit Regulation Compact, has been negotiated by representatives of the States and the District of Columbia and has been adopted by the State

of Virginia (ch. 627, 1958 Acts of General Assembly), and in substance by the State of Maryland:

"The States of Maryland and Virginia and the District of Columbia hereinafter referred to as signatories. do hereby covenant and agree as follows:

[Text of Compact omitted]

Consent Legislation, §1

The consent and approval of Congress is hereby given to the States of Virginia and Maryland and to the District of Columbia to enter into a compact, substantially as follows, for the regulation and improvement of mass transit in the Washington metropolitan area, which compact, known as the Washington metropolitan area transit regulation compact, has been negotiated by representatives of the States and the District of Columbia and has been adopted by the State of Virginia (ch. 627, 1958 Acts of Assembly), and in substance by the State of Maryland.

Consent Legislation, §3.

That, upon the effective date of the compact and so long thereafter as the compact remains effective, the applicability of the laws of the United States, and the rules, regulations, and orders promulgated thereunder, relating to or affecting transportation under the compact and to the persons engaged therein, including those provisions of section 6(e) of the District of Columbia Traffic Act, 1925, as amended by the Act approved February 27, 1931 (46 Stat. 1426; Sec. 40-603(e), D.C. Code, 1951 edition), relating to the powers of the Public Utilities Commission of the District of Co-

lumbia and the Joint Board created under such section, is suspended, except as otherwise specified in the compact, to the extent that such laws, rules, regulations, and orders are inconsistent with or in duplication of the provisions of the compact: *Provided*, That upon the termination of the compact, the suspension of such laws, rules, regulations, and orders, if not theretofore repealed, shall terminate and such laws, rules, regulations, and orders shall thereupon again become applicable and legally effective without further legislative or administrative action: *Provided further*, That nothing in this Act or in the compact shall effect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities: *Provided further*, That nothing in this Act or in the compact consented to and approved hereby shall impair or affect the rights, duties, and obligations created by the Act of July 24, 1956 (ch. 669, 70 Stat. 598), granting a franchise to D.C. Transit System, Inc: *Provided further*, That the term "public interest" as used in section 12(b) of article XII, title 11 of the Compact shall be deemed to include, among other things, the interest of the carrier employees affected: *And provided further*, That nothing herein shall be deemed to render inapplicable any laws of the United States providing benefits for the employees of any carrier subject to this compact or relating to the wages, hours, and working conditions of employees of any

carrier, or to collective bargaining between the carriers of said employees, or to the rights to self-organization, including, but not limited to, the Labor-Management Relations Act, 1947, as amended, and the Fair Labor Standards Act, as amended. Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Utilities Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission.

Compact, Article I

ARTICLE I

There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, cities and airport.

Compact, Article II

ARTICLE II

The signatories hereby create the "Washington Metropolitan Area Transit Commission," hereinafter called the Commission, which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein.

Compact, Article XII, §§ 1(a) and 4(a)

ARTICLE XII

Transportation Covered

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

- (1) transportation by water;
- (2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;
- (3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce; if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;

(5) transportation performed by a common carrier railroad subject to Part I of the Interstate Commerce Act, as amended.

*Certificates of Public Convenience and Necessity;
Routes and Services.*

4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation . . .

II.

Relevant parts of other statutes.

Act of July 1, 1898, 30 Stat. 570 as amended, D.C. Code § 8-108:

The park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States.

Act of March 4, 1909, 35 Stat. 994 as amended, D.C. Code § 8-144:

The application of the rules and regulations prescribed prior to March 4, 1909, or that may be thereafter prescribed by the Director of the National Park Service, under the authority granted by sections 5-204, 8-108, 8-110, 8-127, 8-135 and 8-143, for the Government and proper care of all public grounds placed by that act under the charge and control of the said Director of the National Park Service, is hereby extended to cover the sidewalks around the public grounds and the carriage-ways of such streets as lie between and separate the said public grounds.

Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. § 1;

There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director. The Secretary of the Interior shall appoint the director, and there shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus

established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Act of August 8, 1953, 67 Stat. 496, 16 U.S.C. § 1 c:

(a) The term "National Park System" means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with the provisions of sections 1 and 2-4 of this title, and which are grouped into the following descriptive categories: (1) National Parks, (2) national monuments, (3) national historical parks, (4) national memorials, (5) national parkways, and (6) national capital parks.

Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. § 2:

The director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments which on August 25, 1916, were under the jurisdiction of the Department of the Interior.

ment of the Interior . . . and of such other national parks and reservations of like character as may be created by Congress

Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. § 3:

The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service

Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. §17b:

The Secretary of the Interior is authorized to contract for services or other accommodations provided in the national parks and national monuments for the public under contract with the Department of the Interior, as may be required in the Administration of the National Park Service, at rates approved by him for the furnishing of such services or accommodations to the Government and without compliance with the provisions of section 5 of Title 41.

Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. §§ 20, 20a-g:

CONCESSIONS FOR ACCOMMODATIONS, FACILITIES, AND SERVICES IN AREAS ADMINISTERED BY NATIONAL PARK SERVICE

§20. Congressional findings and statement of purpose

In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended, which directs the Secretary of the Interior to administer national

park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

§ 20a. Authority of Secretary of the Interior to encourage concessioners

Subject to the findings and policy stated in section 20 of this title, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

§ 20b. Protection of concessioner's investment
—Contract terms; compensation for loss of investment

(a) Without limitation of the foregoing, the Secretary may include in contracts for the providing of facilities and services such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment in structures, fixtures improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract (but not against loss of anticipated profits) resulting from discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective under which acts, policies, or decisions the concessioner's authority to conduct some or all of his authorized operations under the contract ceases or his structures, fixtures, and improvements, or any of them, are required to be transferred to another party or to be abandoned, removed, or demolished. Such terms and conditions may include an obligation of the United States to compensate the concessioner for loss of investment, as aforesaid.

Profit commensurate with capital invested and obligations assumed

(b) The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Reasonableness of concessioner's rates and charges

(c) The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

Determination of franchise fees; reconsideration every five years or oftener

(d) Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit involved. Such value is the opportunity for net profit in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time.

§ 20c. New or additional services; preferential rights; operations by a single concessioner

The Secretary may authorize the operation of all accommodations, facilities, and services for visitors, or of all such accommodations, facilities, and

services of generally similar character, in each area, or portion thereof, administered by the National Park Service by one responsible concessioner and may grant to such concessioner a preferential right to provide such new or additional accommodations, facilities, or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. The Secretary may, in his discretion, grant extensions, renewals, or new contracts to present concessioners, other than the concessioner holding a preferential right, for operations substantially similar in character and extent to those authorized by their current contracts or permits.

§ 20d. Renewal preference for satisfactory performance; extensions; new contracts; public notice.

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, and before granting extensions, renewals or new contracts pursuant to the last sentence of section 20c of this title, the Secretary shall give reasonable public notice of his intention so to do and

shall consider and evaluate all proposals received as a result thereof.

§ 20e. Concessioner's possessory interest in concession property; limitations; compensation for taking; determination of just compensation

A concessioner who has heretofore acquired or constructed or who hereafter acquires or constructs, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title, and except as hereinafter provided, which title shall be vested in the United States. Such possessory interest shall not be constructed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of the contract and of laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. The said possessory interest may be assigned, transferred, encumbered, or relinquished. Unless otherwise provided by agreement of the parties, just compensation shall be an amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States determined upon the

basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The provisions of this section shall not apply to concessioners whose current contracts do not include recognition of a possessory interest, unless in a particular case the Secretary determines that equitable considerations warrant recognition of such interest.

§ 20f. Use or non-monetary consideration in leases of government property

The provisions of section 303b of Title 40, relating to the leasing of buildings and properties of the United States, shall not apply to privileges, leases, permits, and contracts granted by the Secretary of the Interior for the use of lands and improvements thereon, in areas administered by the National Park Service, for the purpose of providing accommodations, facilities, and services for visitors thereto, pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, or the Act of August 21, 1935, chapter 593 (49 Stat. 666), as amended.

§ 20g. Record keeping; audit and examination; access to books and records

Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other

books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years, after the close of the business year of each concessioner or subconcessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner or subconcessioner related to the negotiated contract or contracts involved.

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SUPREME COURT, U. S.

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. ~~18~~ 19

**UNIVERSAL INTERPRETIVE SHUTTLE
CORPORATION,**

Petitioner

v.

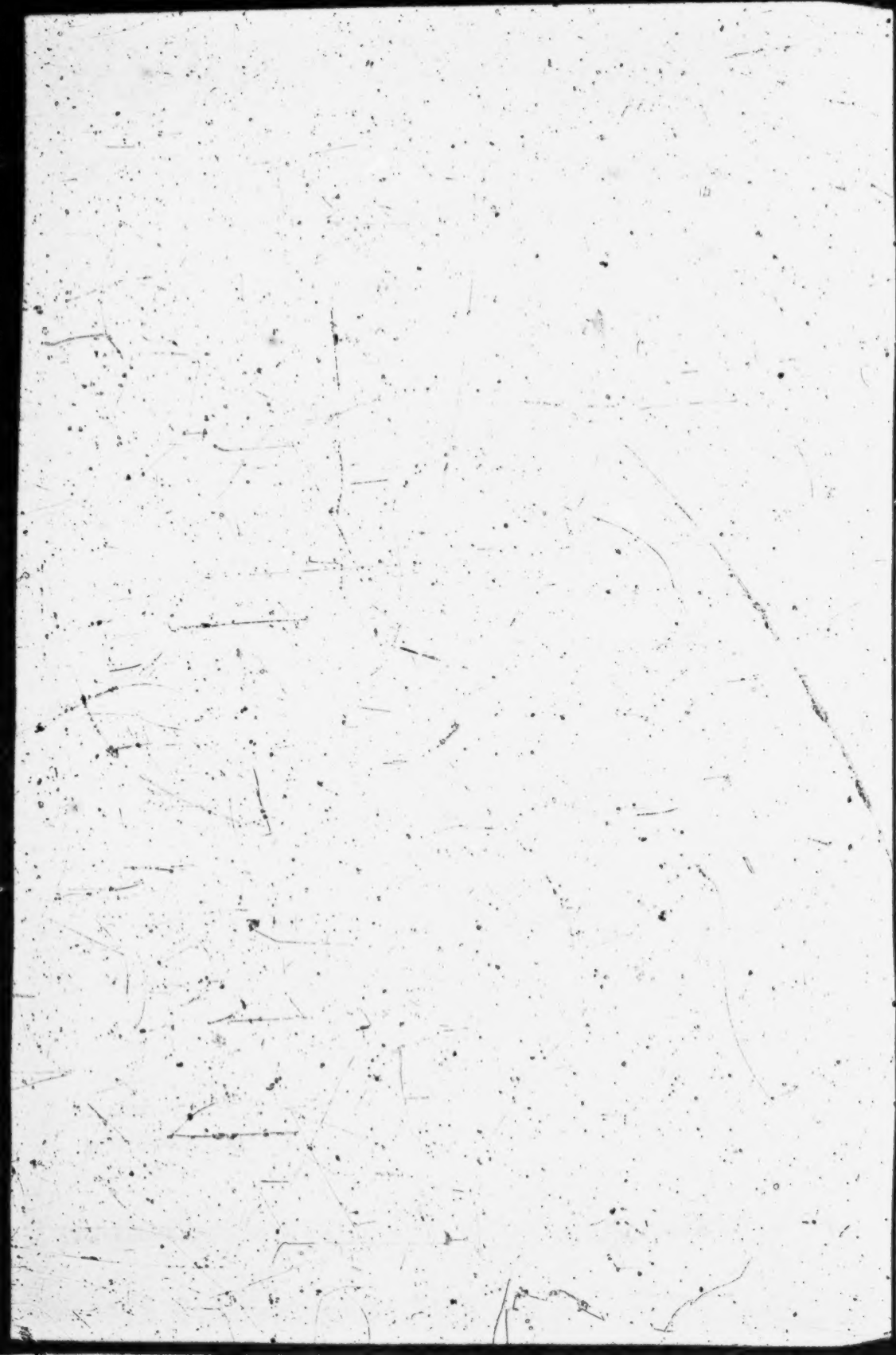
**WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL.,**

Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR RESPONDENT IN OPPOSITION

RUSSELL W. CUNNINGHAM
General Counsel
Washington Metropolitan
Area Transit Commission
1815 North For Myer Drive
Arlington, Virginia 22209



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In the
SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 978

**UNIVERSAL INTERPRETIVE SHUTTLE
CORPORATION,**

Petitioner

v.

**WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL.,**

Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR RESPONDENT IN OPPOSITION

Universal Interpretive Shuttle Corporation ("Universal") has filed with this Court a Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit to review a final decision reversing an order of the United States District Court for the District of Columbia ("District Court"), which held that Universal could operate a for-hire transportation service on the Mall in the District of Columbia without a certificate of public conven-

ience and necessity issued by the Washington Metropolitan Area Transit Commission ("Commission") authorizing such transportation because such service is not transportation under the Washington Metropolitan Area Transit Regulation Compact ("Compact") as it is to be provided by the Secretary of the Interior. The District of Columbia Court of Appeals held that the various relevant laws, especially in view of the location of the Mall in the Metropolitan area of the District of Columbia, did not afford authority to Universal to engage in transportation for hire without a certificate of public convenience and necessity from the Commission.

The United States, by the Department of Justice, has filed a Memorandum as Amicus Curiae. This brief in opposition is submitted to both the petition and the brief amicus curiae.

QUESTIONS PRESENTED FOR REVIEW

1. Is the Transportation Service To Be Provided by Universal "transportation" Under the Compact?
2. Is the Transportation Service "by the Federal Government", and Therefore Exempt From the Provisions of the Compact?

STATEMENT OF THE CASE

The proceedings in the courts below stem from an action instituted in the District Court by the Commission for an injunction and for declaratory relief to enjoin Universal from engaging in the transportation of passengers for hire in the Mall area of the District of Columbia, unless and until such transportation is authorized by a certificate of public convenience and necessity issued by the Commission.

The Commission is an instrumentality of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia, created by an interstate compact, the Washington Metropolitan Area Transit Regulation Compact ("Compact"), between the aforementioned political jurisdictions. The Congress of the United States gave its approval to the

District of Columbia to enter into such compact and consented thereto by Public Law 86-794, September 15, 1960, 74 Stat. 1031 (D.C. Code 1 - § 1410, 1961 Ed.), as amended. The purpose of the Compact was to create in one agency the regulations of the transportation of persons for hire in the Washington Metropolitan area, which was recognized by Congress as a single unified urban community. The Compact became effective March 22, 1961.

In the Fall of 1966, the Secretary of the Interior ("Secretary") instituted, on an experimental basis, a so-called "interpretive shuttle service" to transport passengers through the Mall area of the District of Columbia along the various points of interest. Subsequently, the Secretary issued a prospectus soliciting proposals from various private interests to provide a similar service.

Universal, a California corporation, was selected to be the recipient of a contract to provide the service; the contract was thereupon negotiated between Universal and the Secretary, acting through his Director of National Parks.

Under the terms of the contract, Universal, called a concessionaire, is required to operate a transportation service along routes requested by the Park Service throughout the Mall area. It is further required to provide guides to give a narration to the passengers as the vehicles are in route. Additionally, Universal must station guides at designated points of interest throughout the Mall area. While there is no charge for the latter service, visitors utilizing the transportation service must pay Universal a fee for his guided transportation ride.

Washington Sightseeing Tours, Inc., Blue Lines, Inc., White House Sightseeing Corporation, and D. C. Transit System, Inc., intervened as parties-plaintiffs.

The United States was granted leave to file a representation of interest, to present evidence, file briefs, and otherwise take part in the proceeding.

The Commission's motion for preliminary injunction was consolidated with a hearing on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. The consolidated hearing was conducted on April 25 and 26, 1967.

The claims of the various parties in the District Court and the court of appeals may be succinctly summarized:

(a) *Commission*. The Commission asserted that the case was governed by the terms of the Compact; that the transportation service to be provided by Universal was transportation as that term is used in the Compact and that, therefore, Universal was subject to the provisions of the Compact, unless it could be shown that the transportation fell within one of the exemptions provided therein or unless some other statutory provisions removed the transportation service from the terms and applicability of the Compact. It further asserted that the National Park areas of the District of Columbia are within the geographical area under which the Commission has jurisdiction. Further, that the transportation operations of Universal are not exempt by the terms of the Compact nor by any other statutory enactments of Congress; and that Universal may not engage in transportation for hire within the Metropolitan District unless and until that transportation service is authorized by a certificate of public convenience and necessity.

(b) *Certificated Carriers*. The intervenors adopted the Commission argument. D. C. Transit additionally asserted that the proposed service by Universal constitutes transportation of persons for hire on a scheduled service over a fixed route which will traverse portions of D. C. Transit's regular routes; that such services are derogatory of the protection afforded it not only by the Compact, but by the franchise granted to Transit by Congress, 70 Stat. 598 (September 8, 1956). All of the intervenors further adopted the principle that they would suffer a possible loss of revenue as a result of the proposed service. The Commission disavowed acceptance or reliance upon, for purposes of this suit, the economic injury or impairment of the Congressional franchise ar-

guments, stating that these were matters which properly should be laid before it in a certificate-application proceeding.

(c) *Universal*. The primary argument raised by Universal was that it would not be engaged in "transportation" as that term is used in the Compact. It took the further position that in the event its transportation services would come within the purview of the Act, the transportation service was exempt because it was "by the Federal government". (Section 1(a)(2), Article XII)

(d) *The United States*. The Department of Justice represented that since the transportation service of Universal would be provided as a concessionaire to the National Park Service, the transportation was by the Federal government and therefore exempt from the jurisdiction of the Commission.

The District Court below found that the transportation services of Universal were not transportation under the Compact and accordingly Universal was not subject to the Commission's jurisdiction. Moreover, obiter dictum, it stated that even if the transportation were subject to the provisions of the Compact, such transportation was "by the Federal government", and therefore exempt from Commission jurisdiction.

The petition for an injunction and for declaratory relief was denied.

Thereafter the Commission and the intervenors appealed to the District of Columbia Court of Appeals.

The court of appeals reversed. From the institution of the suit through the decision by the court of appeals, all parties had cooperated to expedite the proceeding in order that a final determination would be reached before the commencement of the summer sightseeing season. Responding to this sense of urgency, the court of appeals announced its decision in salient terms, without elaborating opinions.

Universal's petition for a rehearing *en banc* was denied by the court sitting *en banc*.

ARGUMENT

I

Petitioners Urge an Improper and Incorrect Interpretation of the Statutes Involved

There were three salient questions resolved by the court of appeals. First, that the transportation service of Universal came within the meaning of the Compact. Secondly, no provision in the Compact exempts that transportation service from the Commission's jurisdiction. Thirdly, the transportation service is not removed from the Commission's jurisdiction by any other Congressional law.

This case involves a straightforward matter of statutory interpretation. There is, on the one hand, the Compact which contains broad language conferring plenary powers on the Commission over transportation for hire in the Metropolitan District. There are, on the other hand, a range of statutes which confer certain plenary jurisdiction upon the Secretary over the administration of the National Park System. It is the Commission's position that this case involves acts of Congress of equal dignity and importance. The opinion of the court of appeals holds that each must be read to form a harmonious whole. Universal prefers to turn the Compact into an attempt at usurpation of federal power by the states and thereby deprive it of its status as an act of Congress.

Ignoring the fact that one of the signatories was the District of Columbia, beyond question a creature of the Federal Government, and further ignoring that Congress carefully reviewed the entire terms of the Compact and passed a specific act authorizing its creature, the District Government, to enter into it, Universal and the Government argue that other Federal statutes, concerning the Secretary's powers, must alone be considered as determining the question at issue. The provisions of the Compact supposedly cannot impinge upon these statutory provisions. This is a wholly unacceptable point of view. The Compact must be

regarded as reflecting the will of Congress, just as any other Congressional enactment does.

We can turn now to the language of these Acts. There is nothing in the statutes spelling out the Secretary's powers which specifically deals with the provisions of the Compact. The real question is: what is the relationship between those powers of the Secretary and the powers conferred upon the Commission? The language of the Compact, and its legislative history, provide an answer to that question. The Compact specifically preserves the "normal and ordinary police powers . . . of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities." Compact, Article XII, Section 3.

Does this confer upon the Secretary the exclusive jurisdiction he claims in this proceeding? It would seem not. The Secretary specifically requested that this language be changed to reflect the broader powers he claims and Congress did not act upon his request. Universal tries to brush this fact aside as being at least as consistent with its position as with the Commission's. This attempt to avoid the damaging legislative history is woefully weak.

First, it ignores the fact that Congress had enacted the exemption now claimed by the Secretary in the Interstate Commerce Act, an act which controlled the Commission's predecessor regulator of interstate transportation in the Metropolitan District.² Yet, it did not carry that exemption forward into the Compact. Secondly, it ignores the established and unquestioned powers of another of the Commission's predecessor regulators. It is asserted by Universal that the D. C. Public Service Commission never claimed jurisdiction over public transportation in the National Park areas of the District. This was not so prior to the Compact and is not so today. The D. C. Public Service Commission has always set fares and regulated practices for taxicabs (and for buses, when it regulated them) which operate in National Park areas. The Mall area is included on the D. C.

tain any specific language concerning the Commission's powers. The Compact, on the other hand, does deal with the Secretary's powers. The language used, and its legislative history, does not support the Secretary's claim of exclusive jurisdiction. Nor is this claim supported by the practices of the Commission's predecessor as regulator of public transportation in the District of Columbia. In these circumstances, the preferable way in which to resolve the question of statutory interpretation is the way suggested by the Commission and adopted by the court of appeals. Dual jurisdiction exists. The Secretary may exercise the powers conferred upon him, but his concessionaire must also comply with the provisions of the Compact. Any possible conflicts arising from this dual jurisdiction will be avoided by the exercise of understanding by each government agency involved and comity, with the courts available to arbitrate any irreconcilable disputes. In this way, the Commission will not be completely excluded while a major unit is added to the system of public transportation in the area in which it is directed to achieve a rational, coordinated public transportation system serving the needs of all.

The United States contends that it was error for the Court of Appeals to declare that the Mall area is within the geographical jurisdiction of the Commission (Memorandum, p. 9), although it admits that "[t]echnically, of course, the national park areas in question are within the Metropolitan District. . . ." This assertion criticizes the Court for giving a "literal" application to the language of the Compact. This is impertinent sophistry, for the Court of Appeals stated that it considered the various relevant statutory words as "construed in relation one to the other." It was, obviously, seeking an interpretation of various acts of Congress which would provide a harmonious result.

Contrary to the assertions of Universal and the United States, the Congress considered the role of the Secretary in the transportation field. The legislation proposed that the Secretary (and the states) would continue to exercise "ordi-

nary and normal police powers"—an area separate and distinct from "economic" regulation.

The Secretary of the Interior objected to the language in the proposed consent legislation restricting his jurisdiction over transportation in the metropolitan area to "normal and ordinary police powers." In his letter the Secretary stated as follows:

The proviso beginning on line 5, page 51, purports to save the ordinary police powers of the signatories and the Director of the National Park Service with respect to the regulation of vehicles, control of traffic, and care of street, highway, and other vehicular facilities. Since "police powers" is not a term descriptive of the authority and responsibilities of the Director of the National Park Service, we recommend the following clarifying amendments:

On page 51, lines 8 and 9, delete "and of the Director of the National Park Service."

On page 51, line 11, after the colon insert "Provided further, That nothing in this Act or in the compact shall affect the authority and responsibility of the Secretary of the Interior pursuant to section 3 of the Act of August 25, 1916 (39 Stat. 535), as amended, and other Acts of Congress controlling the development and use of national parks, monuments, and reservations comprising the National Park System."

House Report No. 1621, accompanied H.J. Res. 402, 86 Cong. 1st Sess. May 18, 1960.

The recommending clarifying amendments were rejected by the Congress.

II

**Universal's Service Is Within the Meaning of
the Compact and Therefore the Ambit of
the Commission's Jurisdiction**

A

Universal's Service Is Transportation

Section 1(a) of Article XII of the Compact states:

This Act shall apply to the *transportation* for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, *except*. . . (Emphasis supplied)

1. The language of Section 1(a) is clear and unambiguous. Nevertheless, Universal argues that the term transportation as used in Section 1(a) means "mass transit", and does not apply to all other forms of transportation, including contract, charter, sightseeing and other forms of special operations. Such a determination must be made to support such reasoning. To make such a determination is to ignore that:

(a) Previous regulation by the Commission's predecessor agencies included such forms of transportation. Indeed, as conceded by Universal and the United States before the courts below, the District of Columbia Public Service Commission still has jurisdiction to regulate taxicab fares in the Mall area. It must follow then that it had jurisdiction to regulate bus fares in the Mall area. Since the jurisdiction of the District of Columbia Public Service Commission to regulate bus fares was transferred by the Compact to the Commission, the latter thus has jurisdiction to regulate the transportation of Universal.

(b) The administrative practice of the Commission has included regulation of such forms of transportation.¹

¹ See certificates of public convenience and necessity attached to WMATC Exhibit No. 3.

(c) And the District of Columbia court of appeals and the United States Court of Appeals for the Fourth Circuit have recognized the Commission's jurisdiction over such non-mass transit forms of transportation. The District of Columbia court of appeals said in *Bartsch v. WMATC*, 344 F.2d 201, 120 U.S.App.D.C. 107, (1965), that "[t]he Transit Commission, by virtue of a Compact entered into among Virginia, Maryland, and the District of Columbia, has broad jurisdiction over commercial transportation carried on in the Washington area. . ."

Further, in *D. C. Transit v. WMATC*, ____ U.S.App.D.C. ____, 376 F.2d 765, (March 7, 1967), Judge McGowan wrote:

When Congress consented to the Compact in 1960, it elected to treat the Metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity.

Obviously, the term "transportation" cannot be so narrowly construed as to mean only "mass transit or commuter service," but must be given its normal and ordinary meaning, which would embrace all forms of transportation, whether regular or irregular route, mass transit or special, charter, and pleasure tours. Moreover, such a construction is consistent with Congress' mandate that "[i]n accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof." Article XI, Compact. "The Act (Interstate Commerce) is remedial and to be construed liberally." *Piedmont & Northern Ry. v. Commission*, 286 U.S. 299, 311. See further, *Tcherepnin v. Knight*, 88 S.Ct. 548, 553.

Furthermore, the basic function that Universal is to perform is the movement of people in vehicles between points

in and around the Mall area. That the transportation is to be supplemented by a lecture or "interpretation" of the Mall area does not change the transportation service or mean that transportation is not to be rendered.

Universal's theory, if adopted, will undermine the regulatory scheme adopted by the legislatures, and turn the transportation field into absolute chaos. Its adoption means that any government agency can install a new transportation service in the Metropolitan District by the stroke of a pen. This is not an idle thing. Extensive service is now being rendered for various Federal and State agencies by private carriers, subject to Commission jurisdiction.

This service forms an intricate part of the transportation picture in the Washington Metropolitan area which is under a comprehensive scheme of regulation by the Commission. The "single agency" concept of regulation would thus be torn to shreds and a second regulatory agency placed into the transportation field. The political boundaries between the states which were discarded by the enactment of the Compact would be planted around property owned by the Federal government. While the Commission is charged with the alleviation of traffic congestion (Article II), the very heart of the area would be taken out of its hands, and henceforth any service operated in or through the Mall area deemed to be required by the public convenience and necessity would be subject only to the "sufferance" of the Secretary of Interior. This is contrary to the legislative declaration of Congress that the metropolitan area of Washington should be treated as a geographical unit, with the Commission as the central licensing and rate-making authority.

The Federal enclave in the District of Columbia is *not an isolated area* such as Yellowstone National Park. The court of appeals stressed this fact. It is submitted that Congress recognized this, by refusing to alter its consent legislation as requested by the Secretary (see *supra*, pp. 16, 17), not excluding such areas from the defined geographical area of jurisdiction of the Commission, by eliminating the exemp-

tion that exists in the Interstate Commerce Act, and by declaring that the Metropolitan Washington area is a single, unified urban community.

2. The legislative history of the Act is directly contrary to the assertions and conclusions of Uniwersal and the United States.

The House Committee on the Judiciary, Sub Committee No. 3 held extensive hearings concerning the proposed Compact. One of the prime architects, Jerome Alper, Esquire, prepared for the National Planning Committee a comprehensive report on "Transit Regulations for the Metropolitan Area of Washington, D. C." In that report he pointed out what the jurisdiction of the Transit Commission would be under the act. In part he stated:

"This commission would have *exclusive jurisdiction* over the movement of passengers for a charge between *any* points in the district by motor carrier or street railway. Both contract and common carriers performing such transportation would also be subject to the jurisdiction of the compact commission.****Sightseeing or charter service within the metropolitan district performed by a carrier engaged in transportation subject to the compact law would also be subject to the jurisdiction of the compact commission.* School buses and motor carriers operated by the federal government, the signatory States, or any political subdivision thereof, and any transportation by water would be exempt from the jurisdiction of the compact commission. Taxicabs would be subject to the jurisdiction of the compact commission only for interstate rate-making purposes. (Emphasis supplied)

See Hearings before Sub Committee No. 3 of the Commission on the Judiciary House of Representatives, Eighty-Sixth Congress, First Session. . . , p. 81.

Petitioners claim that the primary purpose of its service will be to interpret the national shrine, and transporting twelve million — *twelve million* — people is only an incident.

tal thing. Accordingly, a fleet of buses to handle such a mass must be put on the streets within the very heart of the city. Yet, it is contended that the Commission is concerned by law only with a municipal problem. Such a parochial problem, it is said, must not be concerned with the movement of twelve million people within the very heart of this "unified, urban city". Such a movement is not "transportation"?

Moreover, interestingly, there will be no charge to the public for the guide service and other ancillary services — only for the "incidental" service of *moving* people by buses.

B

Universal Is the Person Who Will Engage in and Perform the Transportation Service — Not the Federal Government

Article XII, Section 1(a) states that the Compact shall apply to the "transportation for hire by any carrier of persons between any points in the metropolitan district and to the *persons engaged in* rendering or performing such transportation service" except, inter alia, "transportation by the Federal government, the signatories hereto, or any political subdivision thereof." (Emphasis supplied)

It is submitted that there is no precedent extant for the proposition that a carrier of persons pursuant to a contract with the Government is thus considered to be performing transportation by the Government. Indeed, the contrary position has been taken both by the Interstate Commerce Commission and the Federal Courts.

The Interstate Commerce Commission has consistently held that a carrier performing transportation service under contract with the Federal Government must, nevertheless, be the holder of a valid certificate of public convenience and necessity issued by the Commission. In the case of *A. B. & W. Transit Company Extension of Operations — Washington National Airport*, 30 M.C.C. 618, a carrier pro-

viding service to Washington National Airport under contract with the Administrator of Civil Aeronautics nevertheless applied for a certificate of public convenience and necessity from the Interstate Commerce Commission. In *A. B. & W Transit Company Ext. - Dulles International Airport*, 88 M.C.C. 175, the determination there involved the rendition of common carrier service to Dulles Airport. The administrator of the Federal Aviation Agency intervened to request that any certificates granted be conditioned on observance of its rules, regulations and requirements. He conceded however, that section 206(a)(1) of the Act made it mandatory that the carrier with which it might contract for the proposed service must hold certificates of public convenience and necessity issued by the Commission.

Likewise, this same issue was raised by a defendant common carrier in *U.S.A.C. Transport, Inc. v. United States*, 203 F.2d 878. (10th Cir. 1953), cert. denied, 345 U.S. 997 (1953). That carrier attempted to avoid criminal prosecution by alleging as one of its defenses that it was providing transportation for the U.S. Government and, therefore, a certificate of public convenience and necessity was not required. The Tenth Circuit Court of Appeals rejected that defense stating at pages 878-79:

"The defense that the required certificate is not necessary where a common carrier transports property for the United States Government is not well taken. Section 306 of the Act provides that it is a violation for a common carrier to engage in interstate commerce on the public highways without possessing a certificate of public convenience and necessity from the Commission. A common carrier transporting goods for the United States Government for hire from one state to another is still a common carrier, engaged in interstate transportation, to the same extent as when thus transporting goods for a private individual. *Of course, if the Government itself transports its own goods, it need not have the required certificate because it is not subject to the provisions*

of its own laws. That is the principle laid down in *Dollar Savings Bank v. United States*, 19 Wall. 227, 86 U.S. 227; 22 L.Ed. 80 and *United States v. Knight*, 14 Pet. 301, 39 U.S. 301 [Reprint 251], 10 L.Ed. 465, upon which appellant relies. But these decisions do not support the contention that a common carrier, carrying goods in interstate commerce, under contract with the Government, need not comply with the law with respect to the possession of the required certificate. The only case which seems to have passed upon the question is *United States v. Schupper Motor Lines*, D.C. 77 F.Supp. 737. It held squarely that a certificate of convenience and necessity was required by a common carrier carrying goods in interstate commerce for the Government. It is also worthy of note that Sub-section (b) of Section 303, 49 U.S.C.A., which sets out specifically and in detail the vehicles exempted from the operation of the act, makes no reference to vehicles by common carriers while engaged in transporting goods for the Government." (Emphasis supplied)

Thus, *Dollar* lays down the principle of "transportation by the government."

There is nothing in the legislative history of the Compact which alters the doctrine that a common carrier performing service for the government under contract must nevertheless be certified by the appropriate regulatory agency.

If the mere existence of a contract between a carrier and a signatory is sufficient to exempt the transportation service from regulation by the Commission, the result could conceivably cause irreparable damage to the true purpose of the Compact. The States of Maryland Virginia, for example, would thus be free to contract for any transportation anywhere within the Washington Metropolitan area simply by engaging the services of a carrier under contract. The counties and cities could embark upon their own transportation ventures, including *regular route operations*, both outside and within their political boundaries. The large number of Federal Agencies who ordinarily issue contracts

involving transportation could do so with carriers who would not be required to submit themselves to the uniform regulations of the Commission. The Commission therefore, would be faced with the spectre of attempting to regulate public transportation while competing, unregulated carriers are utilizing the same streets. The result would mean total defeat of the uniform system of transportation envisioned by the enactment of the Compact. It was precisely to avoid this narrow, parochial approach and to regulate transportation on an area-wide basis that the Compact was created.

The experimental operation by the Secretary in the fall of 1966, performed in his own vehicles and operated by his own personnel, is an example of transportation by the government, and meets the *Dollar* principle.

Here, however, the facts are further from *Dollar* than those in *U.S.A.C.*, for there the carrier was performing his services *for* the government. Here Universal is performing its service for the general public. Its voluntary acquiescence to the supervision of the Secretary — for a valuable concession privilege — does not alter the character of the service, which is that of a common carrier engaged in transporting the public for hire. The evidence clearly reveals that the service will be in Universal's vehicles, operated by Universal's employees, for a fare collected by Universal.

It should be noted that the contract between Universal and the Secretary states, as follows on page 1:

"Whereas, the United States has not provided such necessary facilities and services and desires the Concessioner to establish and operate the same at reasonable rates under the supervision and regulation of the Secretary; . . ."

This demonstrates the unsoundness of the argument by disclosing that even its evidence fails to support such a rationale, for it is apparent that Universal is to "establish and operate" the transportation. The principal case relied upon by Universal is just not in point, for in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940) the con-

tractor was performing his service for the government. The principle enunciated therein dealt solely with an agency question arising from a suit for damages to a third party. It has no application here.

The broad application urged to be given the exemption proviso is contrary to the well-accepted principle stated in *Piedmont and Northern Ry. v. Commission*, supra, 311:

"As the Act is remedial and to be construed liberally, the proviso defining exemptions is to be read in harmony with the purpose of the measure and held to extend only to carriers plainly within its terms."

C

*Universal Improperly and Erroneously Claims That
Its Transportation Will Not Be Between Any
Points in the Metropolitan District*

Universal contends that its service will not be operated "between any points" (Article XII, Sec. 1(a), but only from and to one point; therefore, its transportation is not within the ambit of the jurisdiction of the Commission. It then asserts that "this very significant fact" was overlooked by the Court of Appeals.

In the first place, counsel for the Commission is unable to find any reference to such a contention in Universal's brief to the Court of Appeals. Hence, it may not raise the point before this Court.

Moreover, the argument is absurd. The contract lists numerous points at which its service will touch in order that the history and other items of interest may be discussed.

Nor does the law say that "between any points" means two or more separate and distinct points. The movement between origin and destination constitutes transportation between points, whether the physical location of the two are at the same or different geographical locations.

III

The D. C. Transit Franchise Is Not Involved Herein

The Court of Appeals did not discuss the contention of D.C. Transit, that its Congressional Franchise protects it from competition above and beyond the provisions of the Compact.

The Commission wishes to make it clear, as it did below, that it neither endorses nor rejects D. C. Transit's position. Accordingly, it offers no argument on this point.

CONCLUSION

The entire theme underlying the argument of the United States is the theoretical National-city cleavage between the Mall as a national shrine and the Mall as a part of the City of Washington. It presupposes that only a Cabinet officer can protect the former and that a state regulatory commission should not aspire beyond the latter.

Congress felt no such fear, nor did it adopt the cleavage concept. The converse is true. The evils Congress was trying to cure — i.e., the elimination of the fragmentation of the Washington metropolitan city, occasioned by the various political divisions — could not be cured by excluding land owned by the United States.

The inescapable conclusion to be drawn from the peculiar relation between some of the Mall streets and the mass transportation complex in the Metropolitan area is that they are essential to transportation of the public; and it is inconceivable that Congress would exclude them from the jurisdiction of the Commission.

The Compact is not a limitation upon the jurisdiction of the Secretary of the Interior — it merely imposes additional requirements upon a person about to engage in the transportation of persons for hire in the Washington Metropolitan District.

The Court of Appeals' opinion will preserve the dual relationship between the laws of the Compact and the Secretary, for their respective responsibilities are not antagonistic. In fact, accommodation and cooperation are their aim. Regulation by the Commission of a common carrier service performed in whole or in part over streets owned by the Federal government and controlled by an agency thereof does not conflict with the internal control of the facilities by that agency since it retains its jurisdiction to maintain its control. This, in fact, has been the practice for years. Carriers desiring to operate over streets in the Parks area have sought operating authority from the Commission and permits from the Park Service.

Congress has clearly voiced its intent that the transportation to be engaged in by Universal is subject to the provisions of the Compact. Neither Universal nor the United States has shown any substantial reason why the opinion of the Court of Appeals should be reviewed. Moreover, the opinion has honored the intent of Congress.

Quite obviously, the issue is restricted to a local controversy, which has arisen out of the control of the Congress over the Nation's capital and its park areas therein. The problem has no relationship to the national park lands throughout the rest of this country, for nowhere else has Congress been confronted with this uniqueness and in no other legislation has Congress acted to establish the duality of jurisdiction which it obviously intended to establish in Washington, D. C.

The petition for a writ of certiorari should, accordingly, be denied.

Respectfully submitted,

RUSSELL W. CUNNINGHAM

General Counsel

Washington Metropolitan

Area Transit Commission

1815 North Fort Myer Drive

Arlington, Virginia 22209

Attorney for Respondent

February 1, 1968

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. ~~19~~ 19

**UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION,**

Petitioner,

v.

**WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION, ET AL**

Respondents.

*ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT.*

**BRIEF FOR RESPONDENT
IN OPPOSITION**

**MANUEL J. DAVIS
SAMUEL M. LANGERMAN**

1420 New York Avenue, N.W.
Washington, D.C. 20005

*Attorneys for Respondent
D.C. Transit System, Inc.*

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In the
SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 978

**UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION,**

Petitioner,

v.

**WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION, ET AL.,**

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

**BRIEF FOR RESPONDENT
IN OPPOSITION**

QUESTIONS PRESENTED

1. Whether the Washington Metropolitan Area Transit Commission, pursuant to the Washington Metropolitan Area Transit Regulation Compact, has regulatory jurisdiction over the for-hire transportation service which Universal Interpretive Shuttle Corporation proposes to perform in the District of Columbia under a contract with the Secretary of the Interior.

2. Whether the Secretary of the Interior has the statutory authority to operate a for-hire transportation service in the District of Columbia.

3. Whether the Congressional Franchise given to D.C. Transit protects it against the for-hire transportation service which Universal Interpretive Shuttle Corporation proposes to perform in the District of Columbia under a contract with the Secretary of the Interior.

COUNTERSTATEMENT OF THE CASE

The Mall area of the District of Columbia, bounded from north to west by the White House, Grant Memorial, Jefferson Memorial, and the Lincoln Memorial, is a national park area under the administrative jurisdiction of the Secretary of the Interior ("Secretary"), through the National Park Service ("Service"). Each year millions of visitors come to the Mall to view the many national monuments, museums, and memorials located thereon. Some 15 million visitors were expected in 1967, a figure which may grow to 35 million by 1980. (Gov't. Ex. 3, p. 2; Executive Order of June 10, 1933, 5 U.S.C. sec. 132; D.C. Code (1967 ed.) § 8-108; Act of August 8, 1953, 67 Stat. 496, 16 U.S.C. sec. 1c.; Gov't Ex. 3, 3 pages of tabulations attached thereto; Gov't Ex. 7, pp. 2-3).

Several common carriers of passengers by motor vehicle, including D.C. Transit System, Inc. ("Transit"), have been performing sightseeing operations in the Mall area for the particular benefit of such visitors. These operations consist of lecture tours conducted by guides licensed by the District Government after a written examination of their knowledge of points of interest in the District. Such operations have been certificated by the Washington Metropolitan Area Transit Commission ("Commission") in accordance with the provisions of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), approved by Act of September 15, 1960, 74 Stat. 1031, D.C. Code §§ 1-1410 to 1416, giving the Commission jurisdiction over

passenger transportation for hire by motor vehicle performed in the District of Columbia and the nearby counties in Maryland and Virginia (the "Metropolitan District"). (WM-ATC Ex. 3; Transit Ex. 1, pp. 3-4.)

On March 17, 1967, the Department of the Interior entered into a contract with Universal Interpretive Shuttle Corporation ("Universal") for the provision of a daily, for-hire, "interpretive shuttle service" for the accommodation of visitors to the Mall. Such service will be operated on city streets outside the Mall and under the jurisdiction of the District Government as well as on city streets within the Mall. (Gov't Exs. 4, Pet. App. 21-44, and 6; Transit Ex. 2, pp. 1-2; Opinion of the trial court, Pet. App. 6, no. 1.)

Under the contract, Universal will operate "articulated trams", in both round-trip and shuttle service, which will stop at 11 points of interest encompassing some 23 national monuments, memorials, museums and Federal buildings. Guides accompanying the trams will provide a continuous narration approved by the Service. Additionally, stationary guides will be provided at the 11 points of interest to furnish information to visitors whether or not they have paid for the narrated tour. (Gov't Ex. 4, Pet. App. 22, 24, and 25; Affidavit of Jay S. Stein, dated April 1, 1967, reproduced as Appendix "A" hereto, pp. 2-3; News Release of the Department of the Interior, dated March 26, 1967, reproduced as Appendix "B" hereto.)

The route to be followed by Universal will be essentially that used by the Service itself during a six-week experiment conducted in 1966, involving the same 11 points of interest noted above. Such route will be operated on a schedule requiring three trips per hour within the first four months of service and a minimum of twelve trips per hour within a year. Both the route and the schedule of trips are subject to final approval of the Secretary. (Gov't. Ex. 3, p. 1 and attached map; Gov't Ex. 4, Pet. App. 23-25, 29, and 30; Affidavit of Jay Stein, p. 1.)

Universal decided not to apply for certification by the Commission of its proposed operation, including that portion to be performed on city streets outside the Mall, after having been advised by the Service that such certification was not necessary. (WMATC Ex. 1, attachments 1 and 2).

For its part, Transit provides daily sightseeing tours, under both individual and group charter arrangements, with licensed guides, which cover almost all of the 23 buildings and monuments to be featured by Universal. These tours are operated, to a substantial extent, over the same city streets to be used by Universal. Transit also provides regular route or scheduled service over some 20 routes traversing the major Mall arteries to be used by Universal. It has been estimated that Transit will lose over a million dollars annually in combined sightseeing and regular-route revenues as a result of Universal's proposed operation. (Transit Ex. 2, pp. 2-3 and attachments 2-9).

SUMMARY OF ARGUMENT

Under the Compact, no for-hire transportation of passengers by motor vehicle can be lawfully performed within the District of Columbia, including national park areas administered by the Secretary, through the Service, without certification by the Commission. While transportation performed by the Government is excepted from the Commission's jurisdiction, the transportation in issue is not covered by such exception. If, however, the transportation in issue is excepted from the Commission's jurisdiction, the Secretary has no authority to perform such transportation. Moreover, independent of the Compact, the Congressional Franchise granted to Transit prohibits a competitive service in the District of Columbia of the nature proposed by Universal without certification by the Commission.

ARGUMENT

I

Pursuant to the Compact, the Commission Has Regulatory Jurisdiction Over the For-hire Transportation Operation Which Universal Proposes To Perform in the District of Columbia Under a Contract With the Secretary.

A. The Commission's Jurisdiction Extends to For-hire Transportation Operations Performed in Whole or in Part on Federal Property Within the Metropolitan District.

Universal first argues that the Commission has no jurisdiction over its proposed operation on the Mall because the Secretary, pursuant to several statutes enacted prior to the Compact, has been given an "exclusive" control thereover which has not been altered by enactment of the Compact. This argument is based upon the premise that the Interstate Commerce Commission (ICC) and the Public Utilities Commission of the District of Columbia (PUC), two of the four predecessors of the Commission, never possessed any authority which modified such "exclusive" control. As will be discussed below, the Secretary did have "exclusive" control over national park areas, including the Mall, until legislation in the 1930's gave the ICC and PUC certain regulatory authority over for-hire motor carrier operations performed thereon. With the enactment of the Compact such authority was incorporated into the Commission's overall responsibility to improve transit and alleviate traffic congestion within the Metropolitan District "on a coordinated basis, without regard to political boundaries". (Compact, Article II.)

This jurisdictional question can best be discussed by a chronological analysis of the pertinent statutes. By the Act of July 1, 1898, 30 Stat. 570, D. C. Code (1967 ed.) § 8-108, Congress gave the Secretary, through predecessors of the Service, "exclusive charge and control" of park areas in the District of Columbia. Around the same period the Secre-

tary was similarly granted "exclusive control" over several other park areas throughout the country.¹

By the Act of August 25, 1916, 39 Stat. 535, 16 U.S.C. secs. 1-3, the Service was established to provide, under the Secretary's direction, for the "supervision, management, and control" of the national park system. Later, by the Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. sec. 17b, the Secretary was authorized "to contract for services or other accommodations" provided in the national parks.

At this point in time Universal, pursuant to the Secretary's "exclusive" control over national parks and his authority "to contract for services", certainly could have performed the operation in issue and been subject to only the Secretary's regulation. However, legislation was passed in 1931, 1935, and 1960 which has qualified the Secretary's "exclusive" jurisdiction insofar as for-hire operations of motor carriers of passengers are concerned.

The Act of February 27, 1931, 46 Stat. 1324, D.C. Code § 40-603(e), provided in part as follows:

That as to all common carriers by vehicles which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District . . . , to regulate their schedules. . . , to locate their stops. . . is vested in the (PUC).

Pursuant to this authority the PUC regulated the routes of Transit's predecessor which traversed the Mall without objection from the Secretary. As an example thereof, PUC Order No. 1623, dated August 5, 1937 (reproduced as Appendix "C" hereto), granted the following route authority²:

¹Sequoia National Park, Act of September 25, 1890, 26 Stat. 478, 16 U.S.C. sec. 43; Mount Rainier National Park, Act of March 2, 1899, 30 Stat. 994, 16 U.S.C. sec. 92; Wind Cave National Park, Act of January 9, 1903, 32 Stat. 765, 16 U.S.C. sec. 142; Mesa Verde National Park, Act of June 29, 1906, 34 Stat. 617, 16 U.S.C. sec. 112; Glacier National Park, Act of May 11, 1910, 36 Stat. 354, 16 U.S.C. sec. 162.

²The PUC regulated the fares charged by all public utilities, including common carriers, operating in the District pursuant to the Act of March 4, 1913, 37 Stat. 974, 994, D. C. Code § 43-401.

Capitol Transit Company be and it is authorized and directed to operate buses over the following route: From terminal on the south side of P Street, Southwest, east on P Street to 4th Street, *north on 4th Street to Washington Drive, west on said Drive to 9th Street*, north on 9th Street to Pennsylvania Avenue. . . (The five-block Washington Drive portion of this route is entirely in the Mall.)

With the enactment of Part II of the Interstate Commerce Act, Act of August 9, 1935, 49 Stat. 543, 49 U.S.C. sec. 301 et seq., a further limitation was placed on the previously "exclusive" character of the Secretary's jurisdiction over national parks throughout the country. Section 203(b)(4) of this Act, 49 U.S.C. sec. 303(b)(4) provides:

Nothing in this part except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments.

In accordance with this language, in *Motor Carrier Safety Regulations - Exemptions*, 10 MCC 533, 538 (1938), the ICC applied its safety regulations to motor carrier operations performed in any of the national parks, including presumably the Mall. The Secretary has never challenged such application of ICC's safety jurisdiction. Furthermore, the ICC has even exercised economic jurisdiction over motor carriers operating in national parks consistent with and subject to the statutory authority of the Secretary. See, for example, *Smoky Mountain Tours Company Common Carrier Application*, 10 M.C.C. 127 (1938), and *Huff Common Carrier Application*, 27 M.C.C. 643 (1941).

Next we come to the statute which lies at the very core of this controversy, the Act of September 15, 1960, 74 Stat. 1031, D.C. Code § 1-1410 et seq., approving the Compact. Before considering the effect this legislation had on the

jurisdiction of the Secretary over national parks, it is helpful to bear in mind the primary objective of the Compact.

Prior to 1960 four separate agencies regulated for-hire motor transportation performed in the Metropolitan District — the ICC, PUC, and State commissions in Maryland and Virginia. The Compact was intended to centralize the regulatory responsibilities of these four agencies in a single agency, the Commission, and thereby substitute a comprehensive system of regulation for fragmentary or piecemeal regulation.³ The United States Court of Appeals for the District of Columbia Circuit has described this regulatory scheme as follows:

When Congress consented to the Compact in 1960, it elected to treat the metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity.⁴

Turning now to a consideration of the impact of the Act of 1960 on the Secretary's jurisdiction over national parks, Section 3 thereof, 74 Stat. 1050, D. C. Code § 1-1412, provides in part as follows:

[N]othing in this Act or in the Compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities.

³House Report No. 1621 of the 86th Congress, 2d Session, accompanying H.J. Res. 402 (May 18, 1960), pp. 6-7.

⁴*D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Com'n*, Case No. 20,188, decided March 7, 1967, pet. for cert. den. October 9, 1967.

Although the legislative history of the Compact is silent as to the congressional intent underlying this language, such intent can be reasonably deduced.

First, if, as contended by Universal, the Congress intended to exclude from the Commission's jurisdiction national parks under the administration of the Secretary, it surely would have used plain language to such effect. The language used, however, is not descriptive of such administration.⁵ Rather, it is descriptive only of the limited traffic or police authority which the signatory states of Maryland and Virginia, and even their political subdivisions, were allowed to retain over for-hire motor carriers of passengers subject to the Commission's comprehensive regulation.

In this connection the Interior Department suggested a clarifying amendment to Section 3 which would have specifically referred to the statutes under which the Secretary administers the national park system. The very failure of the Congress to enact such amendment strongly indicates an intent to include national parks in the Metropolitan District within the purview of the Commission's jurisdiction.⁶

⁵The Department of the Interior underscored this fact in its legislative comments on the Compact prior to its enactment. See p. 49 of House Report No. 1621, *supra*. Cf. Section 209(b) of the Interstate Commerce Act, 49 U.S.C. sec. 309(b).

⁶The Interior Department recommended incorporation of the following language in Section 3:

[N]othing in this Act or in the Compact shall affect the authority and responsibility of the Secretary of the Interior pursuant to Section 3 of the Act of August 25, 1916, as amended, and other Acts of Congress controlling the development and use of national parks, monuments, and reservations comprising the National Park System. *Ibid*.

As no mention of such recommendation is made by the House Judiciary Committee in its report on H.J. Res. 402, it cannot be said with certainty that the Committee rejected the matter on the merits. Such explanation would, however, seem more reasonable than its alternative that the Committee entirely overlooked or neglected to consider a recommendation of an executive department.

Second, the language of the second proviso of Section 3 must be construed in conjunction with other provisions in Section 3. The last sentence thereof provides:

Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Utilities Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission.

Such provision surely indicates that the regulatory authority which the predecessors of the Commission exercised over operations of for-hire motor carriers performed in national parks in the Metropolitan District has been vested, during the life of the Compact, in the Commission.⁷

Third, the Compact itself specifies the type of operations that are intended to be excepted from the Commission's jurisdiction. Five such operations are enumerated in Section 1(a) of Article XII. None of these specific exceptions applies to operations performed by for-hire motor carriers in park areas.

Fourth, it would have been entirely inconsistent for the Congress to have authorized the Commission, under Article II of the Compact, to regulate "on a coordinated basis without regard to political boundaries within the Metropolitan District" and then to have established such a political boundary over national parks.

⁷In this connection, Section 21 of Article XII of the Compact provides that all outstanding rules, regulations and orders of the ICC and PUC with respect to transportation or persons subject to the Compact shall remain in effect, and be enforceable as though they had been prescribed or issued by the Commission, "unless and until otherwise provided by such Commission in the exercise of its powers under this Act".

Finally, from a practical standpoint, if the Congress intended the Commission to discharge effectively its responsibility to improve transit operations within the Metropolitan District, it must surely have intended to give the Commission jurisdiction over the very heart of this District where literally millions of persons come each year and require for-hire transportation services.

The Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. sec. 20, heavily relied on by Universal, neither gave the Secretary any new authority nor took any authority from the Commission. The principle purpose of such legislation was merely to put into statutory form policies which generally had been followed by the Service in contracting for concessions within the national parks.⁸

As noted by the Department of Justice on page 13 of its appellate brief in this proceeding:

It is not necessary to find a grant of authority in the Act of October 9, 1965 . . . That statute was enacted not as a grant of authority to the Secretary to contract with concessionaires (an authority he had traditionally exercised under the pre-existing provisions of 16 U.S.C. sec. 17b) but to encourage a greater use of concessionaires by specifically authorizing the execution of contracts containing provisions advantageous to the concessionaires . . . Thus, the 1965 Act has no direct application to the congressional intent on the main issue, i.e., the alleged transfer of authority to the Washington Metropolitan Area Transit Commission in 1960.

Upon review of all the statutes involved, it is reasonably clear that notwithstanding the Secretary's broad administrative authority over national parks areas in the Metropolitan District, including his unquestioned authority to contract for the operation of for-hire transportation services

⁸1965 U. S. Code Cong. and Adm. News, p. 3489, citing Senate Report No. 765, 89th Congress, 1st Session, accompanying H.R. 2901 (September 22, 1965).

thereon, the Congress intended the regulatory requirements of the Compact to extend to for-hire transportation operations performed in all areas of the Metropolitan District, including national parks.

It should be emphasized that the foregoing discussion has assumed that the operation proposed by Universal will be performed entirely on the Mall. This is not the case, however. As recognized by the trial court, Universal's proposed operation will require its vehicles to cross 14th, 7th, 4th, and 2nd Streets which are outside park grounds and subject to the police jurisdiction of the D.C. Government.⁹ Accordingly, even if the Commission has no authority to regulate Universal's operations on the Mall, it clearly has authority to regulate such operations on city streets outside the Mall.

In this connection, on page 8, footnote 2, Universal indicates that the "ultimate control" of city streets adjacent to the Mall is vested in the Director of the Service by D.C. Code § 8-144. This code provision merely extended to sidewalks around Federal land and to the carriageways of city streets lying between and separating Federal land the application of rules and regulations prescribed pursuant to D.C. Code §§ 5-204 and § 8-108, 110, 127, 135, and 143. While such designated provisions may have, as stated by the trial court on page 5 of its Opinion, authorized "the passage by Park authorities over the D.C. public streets", they certainly did not vest "ultimate control of such streets" in the Director or authorize passage thereover by a "concessioner" of the Director without a certificate from the Commission.

Certain statements by Universal warrant passing comment. On pages 14 and 15 Universal anticipates many impediments being imposed on the Secretary's management of the Mall if the Commission's jurisdiction over its proposed operation is upheld. The anticipated "irreconcilable conflict" is completely unfounded. In practice, when two agencies adminis-

⁹Pet. App. 6, n. 1.

tering separate laws have jurisdiction concurrent in nature requiring them to grant dual approval to certain operations, a comity generally exists which enables the agencies to discharge their fundamental responsibilities in a spirit of cooperation not frustration. In this connection, a dual jurisdiction now exists under the Compact whereby both the Commission and the ICC regulate such matters as safety, insurance, accounting, borrowing, and consolidations. No real conflicts have ever materialized from such dual regulation. There is absolutely no reason to believe that the Commission and the Service will be unable to establish a similar comity of regulations.¹⁰

¹⁰The comity of regulations established between the ICC and the Secretary was described in *Motor Carrier Safety Regulations - Exemptions*, 10 M.C.C. 533, 538, as follows:

Section 203 (b) (4) exempts from the general provisions of the act "motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments." The Secretary of the Interior has prescribed regulations governing the qualifications of employees and safety of operation and equipment of motor vehicles operated under his control, and those regulations have been carefully examined and compared with the regulations prescribed by the order of December 23, 1936. The only possible conflict between the regulations of the Secretary of the Interior and those prescribed by the order of December 23, 1936, is found in part IV of our regulations relating to the reporting of accidents. Representatives of the Secretary of the Interior and a committee representing operators of busses in national parks have informally advised the Bureau of Motor Carriers that they have no objections to reporting accidents to this Commission in the manner prescribed in part IV of the safety regulations, particularly as they recognize the desirability of compiling as complete accident statistics as possible. This being so, and the record showing no reasons to the contrary, the regulations prescribed by the order of December 23, 1936, are made applicable to carriers covered by this exemption.

On pages 15 and 16 Universal characterizes the Commission as an "essentially local body" established by a Compact "to which the United States is not itself a party". The implication is that such a body established by such a Compact could not have been intended to exercise any regulatory authority over a national shrine such as the Mall. Such characterization and implication will be fully discussed in Argument No. 4 herein.

On pages 16 and 17 Universal highlights the fact that a congressionally prepared chart setting forth the Federal statutes suspended by Section 3 of the consent legislation makes no reference to any of the statutes under which the Secretary administers park areas in the Metropolitan District.¹¹ There is an obvious reason for such omission. The statutes administered by the Secretary, not, in the language of Section 3, fundamentally "relating to or affecting transportation under the Compact and to the persons engaged therein", were simply not suspended. As discussed hereinabove, the application of the Compact to park areas under the Secretary's administration is rooted not in the suspension of the Secretary's statutory authority but in the suspension and transfer to the Commission of the regulatory authority of the ICC and PUC existing prior to the enactment of the Compact.

Finally, on page 18 Universal cites *Tennessee v. United States*, 256 F.2d 244, 258 (6th Cir. 1958) and *Robbins v. United States*, 284 Fed. 39, 45 (8th Cir. 1922) as supporting the proposition that the United States has powers analogous to the police powers of the States by which it regulates the use of Government property. Transit is not disputing the general existence of such powers which, "with respect to the regulation of vehicles, control of traffic and use of streets . . .", has been reserved by Section 3 of the consent legislation. Transit is disputing the further proposi-

¹¹House Report No. 1621 of the 86th Congress, *supra*, pp. 29-30.

tion that such reservation resurrected an "exclusive" authority of the Secretary over national parks.

B. The Contract Between the Secretary and Universal Contemplates the Performance of a For-hire Transportation Operation Between Points in the Metropolitan District.

Universal contends on Pages 18-22 that its proposed Mall operation is not the type of "transportation" covered by Sections 1 and 2 of Article XII of the Compact. Universal argues, first, that such operation will not be a "commuter" or "mass transit" service and, second, that such operation will not be performed "on public streets" or "between any points" in the Metropolitan District. Universal's first argument is entirely negated by the legislative history of the Compact, the language of the Compact, and numerous court decisions affirming the Commission's jurisdiction over "non-commuter" operations. Universal's second argument is entirely negated by the facts.

Universal cites two passages from the Preamble to the Compact which, standing alone, suggest a Congressional concern over only "commuter" or interurban operations in the Metropolitan District. When such passages are viewed in the light of the following references in both the legislative history and the Compact to transit operations and traffic conditions *generally*, it is unquestionably clear that the Congress intended the Commission to have jurisdiction over all forms of for-hire transportation (sightseeing, charter, local, and interurban):

The function of the instant Compact is to improve *transit* service offered by the existing privately owned companies through coordinated regulation and improvement of *traffic* conditions on a regional basis. [House Report No. 1621, 86th Congress, *supra*, p. 6]

The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of *transit* and the alleviation of *traffic* congestion within the Metropolitan District on a co-

ordinated basis, without regard to political boundaries within the Metropolitan District. [Compact, Article II]

Each of the signatories pledges to each of the signatory parties faithful cooperation in the solution and control of *transit* and *traffic* problems within the Metropolitan District . . . [Compact, Article X.]

(Underscoring added.)

It is interesting to note in the Preamble itself that the purpose of the Compact is set forth in general terms as follows (D.C. Code § 1-1410):

The establishment of a single organization as the common agency of the signatories to regulate *transit* and alleviate *traffic* congestion. (Underscoring added.)

Moreover, it should be emphasized that the nature of the operations intended to be covered by the Compact are set forth in Section 1(a) of Article XII in the most general terms — “transportation for hire . . . between any points in the Metropolitan District”. Certainly, if the Congress intended to limit the Commission’s jurisdiction to a particular type of service, it would have said something like “commuter or interurban transportation for hire. . .”

Finally, if Congress was not concerned with non-commuter operations performed within the District of Columbia, would it not have simply exempted such operations in the same fashion that intra-Virginia transportation is exempted by Section 1(b) of Article XII?

The Commission’s jurisdiction over sightseeing or charter operations, clearly non- “commuter” in nature, has been affirmed in the following decisions:

Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com’n., 323 F.2d 777 (4th Cir. 1963);

Gadd v. Washington Metropolitan Area Transit Com’n., 121 U.S. App. D.C. 7, 347 F.2d 791 (1965);

Holiday Tours, Inc. v. Washington Met. Area Trans. Com'n., 122 U.S. App. D.C. 96, 352 F.2d 672 (1965);

D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Com'n., 366 F.2d 542 (4th Cir. 1966).

Regarding Universal's contention that its vehicles will not be operated on "public streets or highways", Universal apparently seeks to distinguish streets in the Mall from other streets in the District of Columbia. No authority is cited, however, to support the proposition that a street under the police jurisdiction of the United States Government is less "public" than a street under the police jurisdiction of the D.C. Government. Furthermore, Transit is aware of no action taken to foreclose public travel on streets in the Mall area; its buses travel on such streets every day. In any event, Universal will have to operate on several city streets subject to the jurisdiction of the D.C. Government and therefore clearly "public streets".

Universal also contends that it will not operate "between any points" in the District, quoting language from Section 2(a) of its contract with the Secretary which contemplates a service "originating and terminating at the same point, with no passengers embarking or debarking enroute". It would seem that a service originating at Point A, traveling to Point B, and returning to Point A is, from a physical standpoint, an operation between Points A and B whether or not any passenger is allowed to debark enroute. However, assuming *arguendo* the validity of Universal's contention, it is quite clear that the contract contemplates other types of services which will be operated "between points" in the District of Columbia. In Universal's own words on Page 9:

the Contract contemplates that Universal may, with the approval of the Secretary, provide an interpretive shuttle service whereby passengers can commence the narrated tour, proceed to a given point of interest, debark, remain at that point of interest

and later join another tram at that point and continue the narrated tour.¹²

In view of the foregoing, it is readily apparent that Universal's proposed operation is fully covered by the description of the Commission's jurisdiction set out in Section 1(a) of Article XII.¹³ Accordingly, Universal must obtain a certificate from the Commission as required by Section 4(a) of Article XII.

In passing, two statements on page 20 warrant some comment. First, Universal states that its movement of persons around the Mall is only "incidental" to the primary purpose of providing visitors with an interpretive service. Cannot the same statement be made about all the sightseeing operations certificated by the Commission?

Second, Universal states that its proposed service is distinguishable from and not competitive with existing sightseeing and charter services which operate within the confines of the national parks but pick persons up outside thereof. When it is considered that Universal's proposed service will duplicate Transit's existing service in the following four fundamental respects, it is obvious that the two services are not distinguishable and are competitive:

1. Operating over substantially the same streets, both inside and outside the Mall;
2. Providing a service attractive to the same class of persons—tourists;
3. Employing guides particularly knowledgeable about local points of interest;
4. Providing service to essentially the same points of interest.

¹²As evidence of the unquestioned intent of both Universal and the Secretary to provide the described service, the Court's attention is respectfully directed to page 2 of the News Release of the Department of the Interior and to page 3 of the Affidavit of Jay Stein which are reproduced in the Appendix hereto.

¹³Universal has not disputed that it is a "carrier of persons" as that term is used in Section 1(a) and defined in Section 2(a) and (b).

The loss in revenues to be incurred by Transit as a consequence of such duplication of its service has been estimated at over a million dollars annually. (Transit Ex. 2, pp. 2-3.)

C. Universal and Not the Secretary Will Perform the Contemplated Transportation Operation.

Universal contends on pages 20-21 that the operation in issue will in effect be an activity of the Federal Government which is exempt from the Commission's jurisdiction under Section 1(a)(2) of Article XII of the Compact.¹⁴ Universal argues that if the Government can provide the Mall service directly and be exempt from regulation, it can provide such service indirectly through a concessioner and the Section 1(a)(2) exemption will still be applicable.

Universal's argument ignores the clear language of the Compact which establishes an exemption for transportation "by" the Federal Government. The very use of the word "by" instead of the word "for" indicates that only operations actually performed by the Government itself are to be exempted from regulation.

Assuming *arguendo* that pursuant to an agency relationship a third party can perform a transportation operation for the Government and be exempted from the Commission's regulation, the contract between Universal and the Secretary negates any such relationship. The contract requires Universal to:

1. Supply all the necessary capital and assume all the risk of operating loss (5th whereas clause—Pet. App. 22);
2. Supply all personnel and equipment necessary for the proposed operation (Section 3(a) — Pet. App. 26);
3. Pay to the Government an annual franchise fee of \$1,320.00 (Section 9(a)(1) — Pet. App. 32);

¹⁴This section specifically excepts from the Commission's jurisdiction "transportation by the Federal Government".

4. Pay to the Government 3% of its gross receipts from the preceding year (Section 9(a)(2) – Pet. App. 32);
5. Supply employees coming in direct contact with the public a uniform by which they may be “known and distinguished” as Universal’s employees (Section 17(a) – Pet. App. 39).

These requirements have made Universal nothing more than a “concessioner” whose acts are not legally attributable to the Government.

The two cases cited by Universal, *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956), and *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18 (1940), have no relevancy to this proceeding. Both involved “contractors” who were paid to render certain construction services for the Government; they were not required to pay a franchise fee or to assume the operating risks of a profit-seeking venture.

The correct relationship between the Secretary and Universal is described in *United States v. Gray Line Water Tours of Charleston*, 311 F.2d 799 (4th Cir. 1962), a case in which the Secretary granted a concession to a water carrier to transport visitors to Fort Sumter, a national monument not accessible by land. As noted by the Court on Page 781:

... neither the necessary investment, nor the assumption of the obligations, for such a service would be forthcoming from private sources without some substantial proof of the probable success of the venture. The inducement the Government tendered to an entrepreneur took the form of a preference in the use of the pier.¹⁵

In view of the foregoing, it is clear that the proposed transportation service will be performed by Universal, not the Federal Government, and the exemption in Section 1(a)(2) of Article XII is not applicable.

¹⁵ Under Section 15(a) of its contract with the Secretary Universal is granted a similar preference. See Pet. App. 37.

II

The Secretary of Interior Has No Statutory Authority To Perform a For-hire Transportation Operation in the District of Columbia.

Universal's argument that the for-hire transportation involved herein is "transportation by the Federal Government" assumes the existence of statutory authority for the Secretary, through the Service, to perform such transportation. It is submitted that no such authority exists in the Act of 1916 establishing the Service or the subsequent enactments administered by the Service.

With one limited exception, none of the statutes cited by Universal, codified at 16 U.S.C. secs. 1-3, 17b, and 20a-g, authorizes the Service itself to separate any for-hire transportation services.¹⁶ The Act of August 8, 1953, 67 Stat. 495, 16 U.S.C. sec. 1b, authorized the Secretary to operate a for-hire motor carrier service for his employees at the Carlsbad Caverns National Park in New Mexico. The legislative history of such Act indicates that prior thereto the Service had no authority to perform for-hire transportation operations even for its own employees.¹⁷ Universal has pointed

¹⁶To the contrary, the Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. sec. 20a, specifically provides that the Secretary "shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as 'concessioners') to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service". This provision would seem to make it clear that Congress intends for private persons and not the Federal Government to provide the services in dispute herein.

¹⁷In a letter of July 24, 1953, to the Chairman of the Senate Committee on Interior and Insular Affairs, the Interior Department made the following statement in its legislative comments on H.R. 1524, the bill enacted on August 8, 1953:

This proposed legislation is designed to provide essential housekeeping authority that is needed to manage efficiently the national park system. The provisions of this bill are lim-

to no subsequent enactment, and Transit has found none, by which the Service has been given any additional authority to perform for-hire transportation operations for either employees or visitors.

It is also noteworthy that the Act of August 8, 1953, specifically prohibited the Secretary from performing for-hire transportation services "if adequate transportation facilities are available . . . by any common carrier at reasonable rates . . .". This congressional directive that the Secretary keep out of the transportation business as long as adequate service is available from private sources has also been reflected in executive directives.

The Presidential Memorandum of March 3, 1966, and the accompanying Budget Bureau Circular No. A-76, reproduced as Appendix "D" hereto, established guidelines to determine when the Government should provide products and services for its own use. As noted in paragraph number 2 of the Circular, these guidelines are "in furtherance of the Government's general policy of relying on the private enterprise system to supply its needs". Except for the six instances specified under paragraph number 5, not applicable herein, executive departments are proscribed from operating and managing a "commercial or industrial activity" that is obtainable from a private source. Accordingly, the Secretary would be acting in violation of this executive directive if he were deemed to be the real operator of the proposed Mail service.

In the final analysis, the Secretary has no authority, legislative or executive, to perform the for-hire transportation operations under review.

ited to those matters that are important in the management of that system and are founded upon many years of experience in that field . . . *It is important that our administrative authority in this field keep pace with our responsibilities.* [Emphasis added] 1953 U.S. Code Cong. and Adm. News, pp. 2241-42.

III

The Congressional Franchise Granted to Transit Protects It Against the For-hire Transportation Operation Which Universal Proposes To Perform in the District.

Universal has only briefly touched upon the applicability to this proceeding of Transit's Franchise, Act of July 24, 1956, 70 Stat. 598. Universal contends that the protective provisions of Section 3 of the Franchise are not applicable because the proposed service will not be operated "over a given route on a fixed schedule".¹⁸ As support for such contention, Universal points to the Secretary's right under the contract to change routes and schedules.

As a practical matter, under ICC, PUC, and Commission procedures, motor carrier routes and schedules are always subject to change, generally initiated by the carriers and approved by the commissions. Otherwise, carriers would be unable to meet the changing needs of the public. This does not mean, however, that a route is not "given" or a schedule not "fixed" during the period it remains operative. Stated differently, once approval is granted to a change in a route or schedule, the changed route is "given" and the changed schedule is "fixed".

Obviously a determination of the "given" character of a route or the "fixed" character of a schedule is dependent upon the extent to which they are established or known in advance. In this connection, Universal's route will be "essentially the same" as the six-week experimental operation

¹⁸Section 3 of the Franchise provides:

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia (referred to in this part as the "Commission") to the effect that the competitive line is necessary for the convenience of the public.

performed by the Service itself and shown on Gov't. Ex. 3. Its schedule, under Sections 1(b) and 6(a)(2) of the contract (Pet. App. 23 and 29), will consist of a minimum of three trips per hour within the first four months of operation and twelve trips per hour within one year of operation. It is submitted that such route and schedule are so substantially established as to bring Universal's proposed operation within the protective provisions of Section 3 of the Franchise.

Accordingly, Universal's proposed operation requires certification under the Franchise irrespective of any similar requirement under the Compact.

IV

The Petition Does Not Establish Any Grounds for the Issuance of a Writ of Certiorari.

The first reason Universal has given to warrant a grant of its petition is, in essence, that the decision of the Court of Appeals will enable a "local agency" to exercise a "veto" over a determination of a cabinet officer concerning the use of Federal property under his "exclusive jurisdiction". Such is not the case, however.

This Commission is much more than a "local agency". It is an agency whose creation required an Act of Congress suspending certain Federal laws and vesting it with Federal regulatory functions previously delegated to and exercised by the ICC. It is an agency whose decisions are reviewable by Federal courts. Finally, the Commission is an agency whose very establishment can be altered or repealed by the Congress.¹⁹ These certainly are not characteristics of a "local agency".

The Commission will not exercise a "veto" power over the Secretary. To require a "concessioner" of the Secretary

¹⁹ Act of September 15, 1960, 74 Stat. 1050-1, D. C. Code §§ 1-1412, 1415, 1416.

to obtain a certificate from the Commission is not tantamount to requiring the Secretary to obtain the Commission's approval of plans for the administration and development of a national park area in the Metropolitan District. The Secretary and only the Secretary will decide generally how such park areas should be managed. In particular, insofar as transportation operations are concerned, the Secretary and only the Secretary will decide whether all for-hire motor carriers of passengers should be allowed to enter such areas or whether all such carriers should be excluded from such areas. In this connection, the Secretary and only the Secretary will pick a "concessioner" to be given preferential operating rights. He may pick a carrier from the many already certificated by the Commission or he may pick a carrier that will have to seek such certification. If he picks the latter carrier, he would not seem to be voluntarily subjecting himself to any more of a veto than he now does by requiring the equipment furnished by such carrier to meet all the safety requirements of the ICC. (Contract, Sections 1(b) and 6(a) — Pet. App. 23, 29.)

As a practical matter, it is only reasonable to expect that two agencies exercising concurrent jurisdiction will establish a working relationship pervaded by a spirit of cooperation. It simply is in their own best interests to do so; for in the sense that the Commission can refuse to certificate a "concessioner" of the Secretary, the Secretary can refuse to allow a carrier certificated by the Commission to operate on parkland in the District. One such refusal is as much a veto as the other.²⁰

It would seem clear, therefore, that the Commission and the Secretary will give most careful and sympathetic consid-

²⁰In *United States v. Washington, Virginia & Maryland Coach Co.*, 268 F. Supp. 34 (D.C.D.C. 1967), the Secretary refused to allow a carrier certified by the Commission to use the George Washington Memorial Parkway to provide commuter service to adjacent communities in Virginia. The Secretary did not consider such refusal a veto over or frustration of the Commission's administration of the Compact.

eration to each other's determination of a public need. To the extent such consideration results in a denial, deemed to be dictated by other, overriding considerations, judicial review is readily available to assure the reasonableness thereof.

Respecting the Secretary's alleged "exclusive jurisdiction" over national parks, it is submitted that the many prior references hereinabove to the exercise of regulatory jurisdiction over national parks by the ICC and PUC have fully refuted such contention.

In the final analysis, then, the decision of the Court of Appeals, contrary to the characterization thereof suggested by Universal, merely enables a Commission established by Act of Congress to exercise authority, previously exercised by other congressionally-established regulatory bodies, over parklands in conjunction and consistent with the administration of such lands by an executive agency. Viewed in this proper perspective, it would not seem that the decision of the Court of Appeals presents a "special and important" reason for granting Universal's petition, as required by Rule 19 of the Rules of this Court, 28 U.S.C.

The second reason advanced by Universal for granting its petition is that the decision of the Court of Appeals has "far-reaching negative implications" upon the development of the Mall, a unique area of national interest. It is difficult to understand how such decision has such implications; for as just noted, the Secretary can independently make and execute any plan he deems desirable for the development of the Mall. The only thing he cannot do is to engage the services of a for-hire motor carrier of passengers who has not been certificated by the Commission. Such requirement certainly does not negate the Secretary's plans for the Mall.

While it is true that the Mall area is unique to the nation, it would seem that the Congress fully appreciated such fact in authorizing the Commission to regulate for-hire transportation operations performed thereon. The Congress specifically declared in the Preamble to the Compact (D.C. Code § 1-1410);

Whereas said compact adequately protects the *national* interest in mass transit service in the metropolitan area of the Nation's Capital and properly accommodates the *National* and State interests in and obligations toward mass transit in the metropolitan area . . . (Italics added.)²¹

Under the circumstances, again contrary to Universal's characterization thereof, the decision of the Court of Appeals merely enables a congressionally-established commission, charged with improving transit service in the entire Metropolitan District, to discharge such function in an area of the Metropolitan District where transit service is particularly necessary for the accommodation of millions of visitors. Again, viewed in this proper perspective, the decision of the the Court of Appeals presents no "special and important" reason for granting Universal's petition.

V

The Position of the United States Is Not Well-founded.

In essence, the Government's Memorandum contends that a local agency, administering a purely municipal law designed to foster commuter service within the Metropolitan District, has no authority over national park areas which have always been under the exclusive jurisdiction of the Service. The Government thus pictures an irreconcilable conflict between local and national laws as well as local and national interests, with the former negating the latter. To the extent that such contention merely restates the arguments contained in Universal's petition that have already been covered herein, further discussion is unnecessary. However, it would seem de-

²¹This language would seem to refute fully the statement on Page 7 of the Government's Memorandum that the Congress has maintained a basic dichotomy between municipal and national affairs in legislating with respect to the District of Columbia.

sirable, to comment on a few statements made in the Government's Memorandum for purposes of clarification.

First, the Government on page 2 cites a proviso in the D. C. Traffic Act of 1925, 43 Stat. 1119, 1126, D. C. Code § 40-613, as support for its contention that the Congress in approving the Compact did not limit the Service's exclusive charge and control over park areas in the Capital. Quite the contrary, the Congress in enacting the Compact preserved, among others, an existing limitation on the Service's charge and control thereover established by Act of February 27, 1931. This matter is best illustrated by reference to the following chronology:

In the Traffic Act of 1925, Congress provided for the regulation of motor vehicle traffic in the District of Columbia by a Director of Traffic. Incorporated into the scheme of regulation was a proviso to protect the jurisdiction of the Chief of Engineers, later transferred to the Service, over any such traffic in park areas.²² In the Act of February 27, 1931, 46 Stat. 1424, 1426, D. C. Code § 40-603(e), the Congress established the PUC to regulate bus operations in the District. By not updating the proviso in the Act of 1925 so as to exclude park areas from the PUC's jurisdiction, the Congress limited the previously exclusive jurisdiction of the Chief of Engineers over such park areas. Recognition of such fact is readily found in D. C. Code § 40-613 wherein the "heretofore committed" language of the proviso in the Act of 1925 has been codified as "prior to March 3, 1925, committed".

²² This proviso read as follows:

Nothing contained in this Act shall be construed to interfere with the exclusive charge and control heretofore committed to the Chief of Engineers over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control. * * * (D. C. Code § 40-613)

In short after the Act of 1931 the Chief of Engineers, and later the Service, had exclusive charge and control over park areas in the District insofar as the jurisdiction of the Director of Traffic was concerned but not insofar as the jurisdiction of the PUC was concerned. With the enactment of the Compact the Congress clearly transferred the PUC's jurisdiction over park areas to the Commission.

In this connection, in footnote 5 on page 9, the Government refers to the provision in Section 3 of the consent legislation preserving the "police powers" of the Director of the Service and suggests that such term "necessarily includes the full scope of the existing authority" of the Secretary, through the Service, over national parks. Assuming *arguendo* that such inclusion was intended, the Government has nicely proved what was just stated above — that the limitation on the Secretary's exclusive authority over park lands existing after 1931 was incorporated into the Compact.

Finally, on pages 1 and 10 the Government contends that Congress never intended to give the Commission jurisdiction over the operations proposed by Universal which are "wholly extraneous" and "bear no relation" to its primary function under the Compact. In other words, the suggestion here is that a sightseeing service to be offered out-of-state and foreign visitors coming to the capital of the United States has no real effect on the Commission's responsibility to improve transit service and alleviate traffic congestion in the entire Metropolitan District. It would seem perfectly obvious that any for-hire transportation service, whether or not sightseeing in nature, which is operated daily in the very heartland of the Metropolitan District and which involves the movement of millions of passengers annually is inseparably related to the general transit and traffic problems of such District.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

Manuel J. Davis
Samuel M. Langerman

*Attorneys for Respondent
D.C. Transit System, Inc.*

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIAWASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION,*Plaintiff,*

v.

Civil Action
No. 793-67UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION,*Defendant.*AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTIONWashington)
District of Columbia) ss:

Jay S. Stein, first having been duly sworn, deposes and says:

I am a duly elected vice president of Universal Interpretive Shuttle Corporation, the defendant in the above-styled action.

Universal Interpretive Shuttle Corporation is a California corporation. Universal Interpretive Shuttle Corporation was organized in 1967 to operate a visitors interpretive shuttle service in the Mall area administered by the National Park Service of the Department of the Interior in Washington, D.C. On March 24, 1967, our corporation entered into a contract for the provision of such service with the United States of America acting in this behalf by the Secretary of the Interior through the Director of the National Park Service. A copy of said contract is attached hereto and incorporated herein as Exhibit A. The above-mentioned contract requires our corporation to provide a comprehensive and inspirational visitor interpretive shuttle service on a year round basis (except Christmas Day). The route will be essentially the same as that used by the National Park Service during

their six week experiment in 1966.¹ Tourists utilizing this service will be carried in articulated trams of special design.² The contract requires that a guide, thoroughly conversant with the evolution of the Federal City and the workings of our government, accompany each unit of the tram. A narration approved by the National Park Service will be delivered by such guides enroute continuously throughout the tour. In addition, tour guides will be stationed at 11 points of interest along the Mall. Both the stationary guides and the guides on mobile equipment are required to wear uniforms prescribed by the National Park Service and to be thoroughly conversant with the geography and history of the Nation's Capitol.

The contract also requires that the stationary guides must be prepared to furnish information about the city and its facilities to any person regardless of whether they have paid for the visitors interpretive-shuttle service or not. The contract requires that initial service be furnished at these 11 points of interest:

1. Washington Monument.
2. Bureau of Engraving and Printing.
3. Jefferson Memorial.
4. Lincoln Memorial.
5. Pan American Union, American Red Cross, Interior Department, Daughters of the American Revolution.
6. White House, United States Treasury.
7. Museum of Arts & Industries, Army Medical Museum, Federal Aviation Agency, National Aeronautics and Space Administration.
8. Library of Congress, Supreme Court, U.S. Capitol.
9. National Gallery of Art.

¹ A map of the route is attached as Exhibit B.

² An illustration of the tram is attached as Exhibit C.

10. National History Museum, Federal Bureau of Investigation, National Archives.
11. Museum of History & Technology, Post Office Department.

The contract requires our corporation to conduct both a round-trip interpretive tour service and also an interpretive shuttle service. An all-day ticket will also be available. The official Prospectus on the visitors interpretive shuttle service, issued by the National Capitol Region, National Park Service, specifies that the initial route shall be conducted exclusively on surface streets and roadways lying wholly within the Mall area of the National Park Service and under the exclusive charge and control of the Director of the National Park Service. Prior to entering into the aforementioned contract our corporation was specifically informed that in the opinion of the Department of the Interior the interpretive shuttle service required by the contract would be subject only to the requirements imposed by the United States of America acting in this behalf by the Secretary of the Interior by the Director of the National Park Service.

The contract provides for a comprehensive scheme of regulation of the activities of our corporation by the Secretary of the Interior. Under the terms of the contract the Secretary of the Interior controls both the type and number of mobile units to be utilized, the personnel policy, rates, routes, hours of service, schedule of trips, content of narration and prescribes the uniforms to be worn by guides and drivers. Under the contract the Secretary assigns government land and government improvements to our corporation for use in connection with operations. The Secretary prescribes the manner in which the accounting records of our corporation shall be maintained. Both the Secretary of the Interior and the Comptroller General of the United States have access to and the right to examine any of the pertinent books, documents and records of our corporation. The contract also requires that our corporation carry insurance in amounts approved by the Secretary

against losses by fire, public liability, employee liability and other hazards. The contract requires that the United States must be named as co-insured in all liability policies carried by our corporation. The contract also requires that our corporation furnish such bonds for performance as the Secretary may, in his discretion, require. The contract also requires that the United States of America shall have at all times the first lien on all assets of our corporation utilized in the visitors interpretive shuttle service.

Our corporation entered into the abovementioned contract with express knowledge that every phase of the operation of the visitors interpretive shuttle service would be subject to close and continuous controls by the Director of the National Park Service and the Secretary of the Interior.

As of this date our corporation has been required to commit a total of approximately \$289,000 in order to fulfil the requirements of the contract. This sum includes orders for five trams necessary to commence service (a minimum of 12 trams will be required by the contract to be in operation as of May 31, 1968). The amount committed to date also includes charges for consulting services, executive payroll, legal and accounting fees and travel expenses. The contract requires our corporation to commence the visitors interpretive shuttle service by May 1, 1967. In order to commence service by that date our corporation must commence the recruitment and training of operating personnel no later than April 10, 1967. In order to commence service by May 1, 1967, our projection shows that our corporation must commit an additional investment of approximately \$400,000 in order to satisfy the terms of the contract.

If plaintiff's Motion for Preliminary Injunction is granted by the Court grievous harm to the public interest and severe and continuing tangible and intangible injury to our corporation will result.

We are now approaching the commencement of the major tourist season for the year 1967. The Director of the

National Park Service has informed us that during 1966 more than 12 million visitors from every state in the Union and virtually every nation in the world visited the Central Mall area. Projections furnished to us by Economic Research Associates estimate that approximately 15 million visitors will come to the Central Mall area in 1967. The Secretary of the Interior has determined that the needs and desires of these millions of visitors to the unique points of historical, esthetic and patriotic interest can best be served by the provision of an interpretive shuttle service. The narrations to be delivered by the guides will be approved in advance by the Secretary of the Interior and will be designed for the sole purpose of informing United States citizens and the citizens of other nations, of the true value and importance of the monuments and buildings which enshrine our national heritage. If the operation of this service is enjoined millions of visitors will suffer an intangible but very real loss. Some undetermined but substantial number of these visitors will be making the only trip of their lives to the Nation's Capitol in 1967. The loss of the tour service to such visitors is irreparable.

Contrary to the allegations contained in paragraph 8 of the Affidavit of George A. Avery in Support of Plaintiff's Motion for Preliminary Injunction, the public will not be denied protection against unsafe operations, unfair, unreasonable and unregulated fares and charges and financial responsibility for bodily injury and for death or for loss or damage. As clearly demonstrated by the contract between our corporation and the United States of America, attached hereto, the Secretary of the Interior has imposed stringent and comprehensive regulations to protect the public against all of the dangers listed by Mr. Avery. Our corporation has complied in every detail with every requirement prescribed by the Secretary of the Interior for the protection of the public. Our corporation has every present intention of continuing to comply with all such regulations during the entire term of the contract.

In addition to the grievous harm to the public interest that would ensue if plaintiff's Motion were granted, our corporation would suffer irreparable injury, both tangible and intangible, by the issuance of a preliminary injunction. Our contract with the United States of America requires that we commence operations on May 1, 1967. In order to commence operations by that date we must begin the recruitment of personnel no later than April 10, 1967. We must commit an initial investment of more than \$700,000 by that date. Our investment would be impaired by the issuance of an injunction. In addition, our corporation is seriously concerned about the possibility of impairment of employee morale and the defection of employees who may be recruited and trained but who must remain idle if an injunction issues.

A speedy resolution of this matter is imperative to our corporation. If an injunction should issue after the commencement of operations we project an operating loss of more than \$10,000 per week in the first week operations cease and fixed charges of more than \$5,000 per week thereafter.

/s/ Jay S. Stein

[Notarial Certification, dated April 1, 1967.]

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APPENDIX B

UNITED STATES
DEPARTMENT OF THE INTERIOR

News Release

Telly - 343-4214

OFFICE OF THE SECRETARY

For Release March 26, 1967

CALIFORNIA FIRM SELECTED TO OPERATE MALL
VISITOR SERVICE IN DISTRICT

Secretary of the Interior Stewart L. Udall today announced that Universal Interpretive Shuttle Corporation, (UISC), of Universal City, California, has been selected to operate the Mall Visitor Interpretive Shuttle Service in the District of Columbia, beginning about May 1. Proposals were received from seven firms.

The one-hour tour, to be conducted on 83-passenger open-air tourmobiles, will travel along the same route followed during the six-week experimental service operated last fall by the National Park Service.

The route will be along the Mall and around the Tidal Basin; with stops at the Washington Monument, Bureau of Engraving and Printing, Jefferson Memorial, Lincoln Memorial, Pan American Building, White House, Smithsonian Institution, The Capitol, National Gallery of Art, Natural History Museum, and the Museum of History and Technology.

Secretary Udall emphasized that the new service is intended to interpret the Mall area for the steadily increasing number of people coming to Washington who are visiting national shrines and areas which are chiefly maintained by the National Park Service. It is not aimed at furnishing a mode of transportation which would compete with entities engaged in the transportation of residents of the Washington area, he stressed.

UISC will begin its service with two vehicles beginning about May 1, and within six months plans to operate four

additional tourmobiles, with a total of approximately 12 to be in operation before the end of the year. The tourmobiles consist of a specially designed articulating unit and a trailer, coupled together to provide passenger access through both units. The tourmobiles will be covered but open-sided. Entry and exit are at both ends.

Service will be offered daily including Sundays and holidays until Labor Day from 9 a.m. to 10 p.m. at 30-minute intervals. From Labor Day through April 15 the hours will be 9:30 a.m. to 5:00 p.m. No service will be offered on Christmas Day.

Fares for the one-hour tour at the beginning of the season will be on a zone basis, with three zones to be established. The charge will be 25 cents per zone, or 75 cents for a round trip. Tickets will be sold at 25 cents each or four for 75 cents.

UISC plans to initiate, by November 1 an all-day ticket to sell for \$1 which will permit Mall visitors to board the tourmobile at any stop along the route as many times during the day as desired. All-day tickets for children under 12, will be 75 cents. Beginning next summer a non-stop, uninterrupted tour of the Mall will be offered for 75 cents, on a year-round basis.

Each tourmobile, in addition to the driver, will have an interpreter pointing out the areas of interest. The contractor will also provide personnel at each stop to answer questions and give information on the service and the City.

UISC, a subsidiary of Universal City Studios, Inc., has been operating tours of Universal City Studios in Los Angeles since 1964. During the initial operation here UISC will use tour trams now in use in California. These will be replaced with tourmobiles designed to meet National Park Service requirements.

Under terms of the 10-year contract, UISC will pay 3% of its gross revenue to the Department of the Interior.

APPENDIX C

**PUBLIC UTILITIES COMMISSION OF
THE DISTRICT OF COLUMBIA**

Order No. 1623.

August 5, 1937.

IN THE MATTER OF

An investigation of the transportation requirements of the District of Columbia for all street railway and bus service and facilities of the CAPITAL TRANSIT COMPANY to determine route changes, extensions of service, abandonments, physical changes in facilities, locations of stops, safety zones, and loading platforms, and such other matters as may be pertinent in order that proper and adequate service may be provided by said company within the District of Columbia.

P.U.C. No.
3085/178.

Part 2.

Abandonment and construction of tracks in the vicinity of Four and One-Half Streets.

**AMENDING ORDER NO. 1248 AND
CANCELLING ORDER NO. 1355.**

IT IS ORDERED:

Section 1. That section (5) of Order No. 1248, as amended by Order No. 1355, be and it is further amended to read as follows:

(5) That the Capital Transit Company be and it is authorized and directed to operate buses over the following route:

From terminal on the south side of P Street, Southwest, east on P Street to 4th Street, north on 4th Street to Washington Drive, west on said drive to

9th Street, north on 9th Street to Pennsylvania Avenue, east on Pennsylvania Avenue to terminal east of 7th Street; from said terminal, east on Pennsylvania Avenue to 4th Street, south on 4th Street to O Street, west on O Street to Water Street, south on Water Street to P Street, east on P Street to terminal.

Section 2.. That terminals be established at the following locations:

South side of P Street, Southwest, beginning 32 ft. west of west curb line of 4th Street and extending west 90 ft.

South side of Pennsylvania Avenue, Northwest, beginning 30 ft. east of east curb line of 7th Street and extending east 60 ft.

Section 3. That Order No. 1355 be canceled.

Section 4. That this order take effect Sunday, August 15, 1937.

A TRUE COPY:

/s/ James L. Martin
Executive Secretary.

By the Commission

JAMES L. MARTIN,
Executive Secretary.

August 10, 1937.

In accordance with the provisions of the Act of Congress approved February 27, 1931, this order has been referred to the Joint Board created by the said Act and has been adopted by said Joint Board.

DAN I. SULTAN
Chairman of the Joint Board.

APPENDIX D

For Immediate Release

March 3, 1966

Office of the White House Press Secretary

THE WHITE HOUSE**MEMORANDUM FROM THE PRESIDENT TO
HEADS OF DEPARTMENTS AND AGENCIES**

Each of you is aware of my determination that this Administration achieve maximum effectiveness in the conduct of day-to-day operations of the Government.

We must seek in every feasible way to reduce the cost of carrying our governmental programs. But we must remember that our budgetary costs — our current out-of-pocket expenditures — do not always provide a true measure of the cost of Government activities. This is often true when the Government undertakes to provide for itself a product or a service which is obtainable from commercial sources.

At the same time, it is desirable, or even necessary, in some instances for the Government to produce directly certain products or services for its own use. This action may be dictated by program requirements, or by lack of an acceptable commercial source, or because significant dollar savings may result:

Decisions which involve the question of whether the Government provides directly products or services for its own use must be exercised under uniform guidelines and principles. This is necessary in order —

- to conduct the affairs of the Government on an orderly basis;
- to limit budgetary costs; and
- to maintain the Government's policy of reliance upon private enterprise.

At my direction the Director of the Bureau of the Budget is issuing detailed guidelines to determine when the Government should provide products and services for its own use. These guidelines are the result of long study based on experience over the past six years since the current guidelines were issued.

Each of you is requested to designate an assistant secretary or other official of comparable rank to —

- review new proposals for the agency to provide its own supplies or services before they are included in the agency's budget;
- review experience under the new guidelines; and
- suggest any significant changes to the guidelines which experience may indicate to be desirable.

I do not wish to impose rigid or burdensome reporting requirements on each agency with respect to the new guidelines. However these guidelines will require that appropriate records be maintained relative to agency commercial or industrial activities. I am also requesting the Budget Director to report to me from time to time on how the new directives are being carried out, and whether experience suggests changes in the guidelines or in agency reporting requirements.

/s/ Lyndon B. Johnson

EXECUTIVE OFFICE OF THE PRESIDENT

Bureau of the Budget
Washington, D.C. 20503

March 3, 1966

CIRCULAR
No. A-76

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND
ESTABLISHMENTS

SUBJECT: Policies for acquiring commercial or industrial products and services for Government use.

1. *Purpose.* This Circular replaces the statement of policy which was set forth in Bureau of the Budget Bulletin No. 60-2 dated September 21, 1959. It restates the guidelines and procedures to be applied by executive agencies in determining whether commercial and industrial products and services used by the Government are to be provided by private suppliers or by the Government itself. It is issued pursuant to the President's memorandum of March 3, 1966, to the heads of departments and agencies.

2. *Policy.* The guidelines in this Circular are in furtherance of the Government's general policy of relying on the private enterprise system to supply its needs.

In some instances, however, it is in the national interest for the Government to provide directly the products and services it uses. These circumstances are set forth in paragraph 5 of this Circular.

No executive agency will initiate a "new start" or continue the operation of an existing "Government commercial or industrial activity" except as specifically required by law or as provided in this Circular.

3. *Definitions.* For purposes of this Circular:

a. A "new start" is a newly established Government commercial or industrial activity or a reactivation, expansion, modernization or replacement of such an activity involving additional capital investment of \$25,000 or more or additional annual costs of production of \$50,000 or more.

Consolidation of two or more activities without increasing the overall total amount of products or services provided is not a "new start."

b. *A Government commercial or industrial activity* is one which is operated and managed by an executive agency and which provides for the Government's own use a product or service that is obtainable from a private source.

c. *A private commercial source* is a private business concern which provides a commercial or industrial product or service required by agencies and which is located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico.

4. *Scope.* This Circular is applicable to commercial and industrial products and services used by executive agencies, except that it

a. Will not be used as authority to enter into contracts if such authority does not otherwise exist nor will it be used to justify departure from any law or regulation, including regulations of the Civil Service Commission or other appropriate authority, nor will it be used for the purpose of avoiding established salary or personnel limitations.

b. Does not alter the existing requirement that executive agencies will perform for themselves those basic functions of management which they must perform in order to retain essential control over the conduct of their programs. These functions include selection and direction of Government employees, assignment of organizational responsibilities, planning of programs, establishment of performance goals and priorities, and evaluation of performance.

c. Does not apply to professional staff and managerial advisory services such as those normally provided by an office of general counsel, a management and organization staff, or a systems analysis unit. Advisory assistance in areas such as these may be provided either by Government staff organizations or from private sources as deemed appropriate by executive agencies.

d. Does not apply to products or services which are provided to the public. (But an executive agency which provides a product or service to the public should apply the provisions of this Circular with respect to any commercial or industrial products or services which it uses.)

e. Does not apply to products or services obtained from other Federal agencies which are authorized or required by law to furnish them.

f. Should not be applied when its application would be inconsistent with the terms of any treaty or international agreement.

5. *Circumstances under which the Government may provide a commercial or industrial product or service for its own use.* A Government commercial or industrial activity may be authorized only under one or more of the following conditions:

a. *Procurement of a product or service from a commercial source would disrupt or materially delay an agency's program.* The fact that a commercial or industrial activity is classified or is related to an agency's basic program is not an adequate reason for starting or continuing a Government activity, but a Government agency may provide a product or service for its own use if a review conducted and documented as provided in paragraph 7 establishes that reliance upon a commercial source will disrupt or materially delay the successful accomplishment of its program.

b. *It is necessary for the Government to conduct a commercial or industrial activity for purposes of combat support or for individual and unit retraining of military personnel or to maintain or strengthen mobilization readiness.*

c. *A satisfactory commercial source is not available and cannot be developed in time to provide a product or service when it is needed.* Agencies' efforts to find satisfactory commercial sources should be supplemented as appropriate by obtaining assistance from the General Services and Small Business Administrations or the Business and Defense Serv-

ices Administration. Urgency of a requirement is not an adequate reason for starting or continuing a Government commercial or industrial activity unless there is evidence that commercial sources are not able and the Government is able to provide a product or service when needed.

d. *The product or service is available from another Federal agency.* Excess property available from other Federal agencies should be used in preference to new procurement as provided by the Federal Property and Administrative Services Act of 1949, and related regulations.

Property which has not been reported excess also may be provided by other Federal agencies and unused plant and production capacity of other agencies may be utilized. In such instances, the agency supplying a product or service to another agency is responsible for compliance with this Circular. The fact that a product or service is being provided to another agency does not by itself justify a Government commercial or industrial activity.

e. *Procurement of the product or service from a commercial source will result in higher cost to the Government.* A Government commercial activity may be authorized if a comparative cost analysis prepared as provided in this Circular indicates that the Government can provide or is providing a product or service at a cost lower than if the product or service were obtained from commercial sources.

However, disadvantages of starting or continuing Government activities must be carefully weighed. Government ownership and operation of facilities usually involve removal or withholding of property from tax rolls, reduction of revenues from income and other taxes, and diversion of management attention from the Government's primary program objectives. Losses also may occur due to such factors as obsolescence of plant and equipment and unanticipated reductions in the Government's requirements for a product or service. Government commercial activities should not be started or continued for reasons involving com-

parative costs unless savings are sufficient to justify the assumption of these and similar risks and uncertainties.

6. *Cost comparisons.* A decision to rely upon a Government activity for reasons involving relative costs must be supported by a comparative cost analysis which will disclose as accurately as possible the difference between the costs which the Government is incurring or will incur under each alternative.

Commercial sources should be relied upon without incurring the delay and expense of conducting cost comparison studies for products or services estimated to cost the Government less than \$50,000 per year. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study will be directed by the agency head or by his designee even if it is estimated that the Government will spend less than \$50,000 per year for the product or service. A Government activity should not be authorized on the basis of such a comparison study, however, unless reasonable efforts to obtain satisfactory prices from existing commercial sources or to develop other commercial sources are unsuccessful.

Cost comparison studies also should be made before deciding to rely upon a commercial source when terms of contracts will cause the Government to finance directly or indirectly more than \$50,000 for costs of facilities and equipment to be constructed to Government specifications.

a. *Costs of obtaining products or services from commercial sources* should include amounts paid directly to suppliers, transportation charges, and expenses of preparing bid invitations, evaluating bids, and negotiating, awarding, and managing contracts. Costs of materials furnished by the Government to contractors, appropriate charges for Government owned equipment and facilities used by contractors and costs due to incentive or premium provisions in contracts also should be included. If discontinuance of a Government commercial or industrial activity will cause a facility being retained by the Government for mobilization or

other reasons to be placed in a standby status, the costs of preparing and maintaining the facility as standby also should be included. Costs of obtaining products or services from commercial sources should be documented and organized for comparison with costs of obtaining the product or service from a Government activity.

b. *Costs of obtaining products or services from Government activities* should include all costs which would be incurred if a product or service were provided by the Government and which would not be incurred if the product or service were obtained from a commercial source. Under this general principle, the following costs should be included, considering the circumstances of each case:

(1) *Personal services and benefits.* Include costs of all elements of compensation and allowances for both military and civilian personnel, including costs of retirement for uniformed personnel, contributions to civilian retirement funds, (or for Social Security taxes where applicable), employees' insurance, health, and medical plans, (including services available from Government military or civilian medical facilities), living allowances, uniforms, leave, termination and separation allowances, travel and moving expenses, and claims paid through the Bureau of Employees' Compensation.

(2) *Materials, supplies, and utilities services.* Include costs of supplies and materials used in providing a product or service and costs of transportation, storage, handling, custody, and protection of property, and costs of electric power, gas, water, and communications services.

(3) *Maintenance and repair.* Include costs of maintaining and repairing structures and equipment which are used in providing a product or service.

(4) *Damage or loss of property.* Include costs of uninsured losses due to fire or other hazard, costs of insurance premiums and costs of settling loss and damage claims.

(5) *Federal taxes.* Include income and other Federal tax revenues (except Social Security taxes) received from corporations or other business entities (but not from individual stockholders) if a product or service is obtained through commercial channels. Estimates of corporate incomes for these purposes should be based upon the earnings experience of the industry, if available, but if such data are not available, *The Quarterly Financial Report of Manufacturing Corporations*, published by the Federal Trade Commission and the Securities and Exchange Commission may be consulted. Assistance of the appropriate Government regulatory agencies may be obtained in estimating taxes for regulated industries.

(6) *Depreciation.* Compute depreciation as a cost for any new or additional facilities or equipment which will be required if a Government activity is started or continued. Depreciation will not be allocated for facilities and equipment acquired by the Government before the cost comparison study is started. However, if reliance upon a commercial source will cause Government owned equipment or facilities to become available for other Federal use or for disposal as surplus, the cost comparison analysis should include as a cost of the Government activity, an appropriate amount based upon the estimated current market value of such equipment or facilities. The Internal Revenue Service publication, *Depreciation; Guidelines and Rules* may be used in computing depreciation. However, rates contained in this publication are maximums to be used only for reference purposes and only when more specific depreciation data are not available. Accelerated depreciation rates permitted in some instances by the Internal Revenue Service will not be used.

(7) *Interest.* Compute interest for any new or additional capital to be invested based upon the current rate for long-term Treasury obligations for capital items having a useful life of 15 years or more and upon the average rate of return on Treasury obligations for items having a useful life or less

than 15 years. Yield rates reported in the current issue of the *Treasury Bulletin* will be used in these computations regardless of any rates of interest which may be used by the agency for other purposes.

(8) *Indirect Costs.* Include any additional indirect costs incurred by the agency resulting from a Government activity for such activities as management and supervision, budgeting, accounting, personnel, legal and other applicable services.

7. *Administering the policy.*

a. *Inventory.* Each agency will compile and maintain an inventory of its commercial or industrial activities having an annual output of products or services costing \$50,000 or more or a capital investment of \$25,000 or more. In addition to such general descriptive information as may be appropriate, the inventory should include for each activity the amount of the Government's capital investment, the amount paid annually for the products or services involved, and the basis upon which the activity is being continued under the provisions of this Circular. The general descriptive information needed for identifying each activity should be included in the inventory by June 30, 1966. Other information needed to complete the inventory should be added as reviews required in paragraph 7b and c are completed.

b. *"New starts."*

(1) A "new start" should not be initiated until possibilities of obtaining the product or service from commercial sources have been explored and not until it is approved by the agency head or by an assistant secretary or official of equivalent rank on the basis of factual justification for establishing the activity under the provisions of this Circular.

(2) If statutory authority and funds for construction are required before a "new start" can be initiated, the actions to be taken under this Circular should be completed before the agency's budget request is submitted to the Bureau of the Budget. Instructions concerning data to be

submitted in support of such budget requests will be included in annual revisions of Bureau of the Budget Circular No. A-11.

(3) A "new start" should not be proposed for reasons involving comparative costs unless savings are sufficient to outweigh uncertainties and risk of unanticipated losses involved in Government activities.

The amount of savings required as justification for a "new start" will vary depending on individual circumstances. Substantial savings should be required as justification if a large new or additional capital investment is involved or if there are possibilities of early obsolescence or uncertainties regarding maintenance and production costs, prices and future Government requirements. Justification may be based on smaller anticipated savings if little or no capital investment is involved, if chances for obsolescence are minimal, and if reliable information is available concerning production costs, commercial prices and Government requirements. While no precise standard is prescribed in view of these varying circumstances a "new start" ordinarily should not be approved unless costs of a Government activity will be at least 10 percent less than costs of obtaining the product or service from commercial sources.

A decision to reject a proposed "new start" for comparative cost reasons should be reconsidered if actual bids or proposals indicate that commercial prices will be higher than were estimated in the cost comparison study.

(4) When a "new start" begins to operate it should be included in an agency's inventory of commercial and industrial activities.

c. Existing Government activities.

(1) A systematic review of existing commercial or industrial activities (including previously approved "new starts" which have been in operation for at least 18 months) should be maintained in each agency under the direction of the agency head or the person designated by him as provided in para-

graph 8. The agency head or his designee may exempt designated activities if he decides that such reviews are not warranted in specific instances. Activities not so exempted should be reviewed at least once before June 30, 1968. More frequent review of selected activities should be scheduled as deemed advisable. Activities remaining in the inventory after June 30, 1968, should be scheduled for at least one additional follow-up review during each three-year period but this requirement may be waived by the agency head or his designee if he concludes that such further review is not warranted.

(2) Reviews should be organized in such a manner as to ascertain whether continued operation of Government commercial activities is in accordance with the provisions of this Circular. Reviews should include information concerning availability from commercial sources of products or services involved and feasibility of using commercial sources in lieu of existing Government activities.

(3) An activity should be continued for reasons of comparative costs only if a comparative cost analysis indicates that savings resulting from continuation of the activity are at least sufficient to outweigh the disadvantages of Government commercial and industrial activities. No specific standard or guideline is prescribed for deciding whether savings are sufficient to justify continuation of an existing Government commercial activity and each activity should be evaluated on the basis of the applicable circumstances.

(4) A report of each review should be prepared. A decision to continue an activity should be approved by an assistant secretary or official of equivalent rank and the basis for the decision should appear in the inventory record for the activity. Activities not so approved should be discontinued. Reasonable adjustments in the timing of such actions may be made, however, in order to alleviate economic dislocations and personal hardships to affected career personnel.

8. *Implementation.* Each agency is responsible for making the provisions of this Circular effective by issuing appro-

priate implementing instructions and by providing adequate management support and procedures for review and follow-up to assure that the instructions are placed in effect.

If overall responsibility for these actions is delegated by the agency head, it should be assigned to a senior official reporting directly to the agency head.

If legislation is needed in order to carry out the purposes of this Circular, agencies should prepare necessary legislative proposals for review in accordance with Bureau of the Budget Circular No. A-19.

9. *Effective date.* This Circular is effective on March 31, 1966.

● Charles L. Schultze
Director

APPENDIX E

(STATUTES NOT PRINTED IN APPENDIX TO THE PETITION)

**ACTS RELATING TO JURISDICTION AND
AUTHORITY OF NATIONAL PARK SERVICE**

Act of September 25, 1890, 26 Stat. 478; 16 U.S.C. sec. 43.

Sequoia National Park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities or wonders within said park, and their retention in their natural condition. * * *

Act of March 2, 1899, 30 Stat. 994, 16 U.S.C. sec. 92

Mount Rainier National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the powers and duties enumerated in section 3 of this title, not inconsistent with this section, he shall make regulations providing for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition.

* * *

Act of January 9, 1903, 32 Stat. 765, 16 U.S.C. sec. 142

Wind Cave National Park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be to prescribe such rules and regulations and establish such service as he may deem necessary for the care and management of the same. * * *

Act of June 29, 1906, 34 Stat. 617, 16 U.S.C. sec. 112

Mesa Verde National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the

duties and powers enumerated in section 3 of this title not inconsistent with this section, he shall establish such service as he may deem necessary for the care and management of the same. Such regulations shall provide specifically for the preservation from injury or spoliation of the ruins and other works and relics of prehistoric or primitive man within said park. * * *

Act of May 11, 1910, 36 Stat. 354, 16 U.S.C. sec. 162.

Glacier National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the powers and duties enumerated in section 3 of this title not inconsistent with this section, he shall make and publish such rules and regulations not inconsistent with the laws of the United States as he may deem necessary or proper for the care, protection, management, and improvement of the same, which regulations shall provide for the preservation of the park in a state of nature so far as is consistent with the purposes of section 161 of this title, and for the care and protection of the fish and game within the boundaries thereof. * * *

Act of August 8, 1953, 67 Stat. 495, 16 U.S.C. sec. 1b.

In order to facilitate the administration of the National Park System and miscellaneous areas administered in connection therewith, the Secretary of the Interior is authorized to carry out the following activities, and he may use applicable appropriations for the aforesaid system and miscellaneous areas for the following purposes:

Emergency assistance

1. Rendering of emergency rescue, fire fighting, and cooperative assistance to nearby law enforcement and fire prevention agencies and for related purposes outside of the National Park System and miscellaneous areas.

Utility facilities; erection and maintenance

2. The erection and maintenance of fire protection facilities, water lines, telephone lines, electric lines, and other utility facilities adjacent to any area of the said National

Park System and miscellaneous areas, where necessary to provide service in such area.

Transportation of employees of Carlsbad Caverns National Park; rates

3. Transportation to and from work, outside of regular working hours, of employees of Carlsbad Caverns National Park, residing in or near the city of Carlsbad, New Mexico, such transportation to be between the park and the city, or intervening points, at reasonable rates to be determined by the Secretary of the Interior taking into consideration, among other factors, comparable rates charged by transportation companies in the locality for similar services, the amounts collected for such transportation to be credited to the appropriation current at the time payment is received: *Provided*, That if adequate transportation facilities are available, or shall be available by any common carrier, at reasonable rates, then and in that event the facilities contemplated by this paragraph shall not be offered.

Utility services for concessioners; reimbursement

4. Furnishing, on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System and miscellaneous areas: *Provided*, That reimbursements for cost of such utility services may be credited to the appropriation current at the time reimbursements are received.

Supplies and rental of equipment; reimbursement

5. Furnishing, on a reimbursement of appropriation basis, supplies, and the rental of equipment to persons and agencies that in cooperation with, and subject to the approval of, the Secretary of the Interior, render services or perform functions that facilitate or supplement the activities of the Department of the Interior in the administration of the National Park System and miscellaneous areas: *Provided*, That reimbursements

hereunder may be credited to the appropriation current at the time reimbursements are received.

Contracts for utility facilities

6. Contracting, under such terms and conditions as the said Secretary considers to be in the interest of the Federal Government, for the sale, operation, maintenance, repair, or relocation of Government-owned electric and telephone lines and other utility facilities used for the administration and protection of the National Park System and miscellaneous areas, regardless of whether such lines and facilities are located within or outside said system and areas.

Rights-of-way

7. Acquiring such rights-of-way as may be necessary to construct, improve, and maintain roads within the authorized boundaries of any area of the said National Park System and miscellaneous areas, and the acquisition also of land adjacent to such rights-of-way, when deemed necessary by the Secretary, to provide adequate protection of natural features or to avoid traffic and other hazards resulting from private road access connections, or when the acquisition of adjacent residual tracts, which otherwise would remain after acquiring such rights-of-way, would be in the public interest.

Operation and maintenance of motor and other equipment; rent of equipment; reimbursement

8. The operation, repair, maintenance, and replacement of motor and other equipment on a reimbursable basis when such equipment is used on Federal projects of the said National Park System and miscellaneous areas, chargeable to other appropriations, or on work of other Federal agencies, when requested by such agencies. Reimbursement shall be made from appropriations applicable to the work on which the equipment is used at rental rates established by the Secretary, based on actual or estimated cost of operation, repair, maintenance, depreciation, and equipment management

control and credited to appropriations currently available at the time adjustment is effected, and the Secretary may also rent equipment for fire control purposes to State, county, private, or other non-Federal agencies that cooperate with the Secretary in the administration of the ~~said~~ National Park System and other areas in fire control, such rental to be under the terms of written cooperative agreements, the amount collected for such rentals to be credited to appropriations currently available at the time payment is received.

* * *

FRANCHISE OF D.C. TRANSIT

Act of July 24, 1956

70 Stat. 598

* * *

Section 1. (a) There is hereby granted to D.C. Transit System, Inc., a corporation of the District of Columbia (referred to in this part as the "Corporation") a franchise to operate a mass transportation system of passengers for hire within the District of Columbia and between the District of Columbia and points within the area (referred to in this part as the "Washington Metropolitan Area") comprising all of the District of Columbia, the cities of Alexandria and Falls Church, and the counties of Arlington and Fairfax in the Commonwealth of Virginia and the counties of Montgomery and Prince Georges in the State of Maryland, subject, however, to the rights to render service within the Washington Metropolitan Area possessed, at the time this section takes effect, by other common carriers of passengers: *Provided*, That nothing in this section shall be construed to exempt the Corporation from any law or ordinance of the Commonwealth of Virginia or the State of Maryland or any political subdivision of such Commonwealth or State, or of any rule, regulation, or order issued under the authority of any such law or ordinance, or from applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder.

(b) Wherever reference is made in this part to "D.C. Transit System, Inc." or to the "Corporation", such reference shall include the successors and assigns of D.C. Transit System, Inc.

(c) As used in this part the term "franchise" means all the provisions of this part 1.

* * *

Sec. 3. No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia (referred to in this part as the "Commission") to the effect that the competitive line is necessary for the convenience of the public.

* * *

Sec. 6. The Corporation is hereby authorized and empowered to engage in special charter or sightseeing services subject to compliance with applicable laws, rules and regulations of the District of Columbia and of the municipalities or political subdivisions of the States in which such service is to be performed, and with applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder.

* * *

WASHINGTON METROPOLITAN AREA TRANSIT REGULATION
COMPACT, AS APPROVED BY ACT OF SEPTEMBER 15, 1960, 74
STAT. 1031 ET SEQ., D.C. CODE (1967 Ed. §§ 1-1410 to 1416

* * *

A. Consent Legislation

Sec. 6. Jurisdiction is hereby conferred (1) upon the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit, respectively, to review orders of the Washington Metropolitan Area Transit Commission as provided by section 17, article XII, title II, of the Washington Metropolitan Area Transit Regulation Compact, and (2) upon the United States district courts to enforce the provisions of said title II as provided in section 18, article XII, title II, of said Compact.

Sec. 7. (a) The right to alter, amend, or repeal this Act is hereby expressly reserved.

(b) The Washington Metropolitan Area Transit Commission shall submit to Congress copies of all periodic reports made by the Commission to the Governors, the Commissioners of the District of Columbia and/or the Legislatures of the compacting States.

(c) The Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Washington Metropolitan Area Transit Commission as is deemed appropriate by the Congress or any of its committees. Further, Congress or any of its committees shall have access to all books, records and papers of the Washington Metropolitan Area Transit Commission as well as the right of inspection of any facility use, owned, leased, regulated or under the control of said Commission.

Approved September 15, 1960.

* * *

B. Compact**ARTICLE II**

The signatories hereby create the "Washington Metropolitan Area Transit Commission", hereinafter called the Commission, which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein.

* * *

ARTICLE X

Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems within the Metropolitan District and, in order to effect such purposes; agrees to enact any necessary legislation to achieve the objectives of the compact to the mutual benefit of the citizens living within said Metropolitan District and for the advancement of the interests of the signatories hereto.

* * *

ARTICLE XII***Transportation Covered***

* * *

1. (b) The provisions of this Title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of this Title II be construed to infringe the exercise of any

power or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

* * *

Definitions

2. As used in this Act —

(a) The term "carrier" means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.

(b) The term "motor vehicle" means any automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.

(c) The term "street railways" means any streetcar, bus, or other similar vehicle propelled or drawn by electrical or mechanical power on rails and used for transportation of passengers.

(d) The term "taxicab" means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct.

(e) The term "person" means any individual, firm, copartnership, corporation, company, association or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

* * *

Existing Rules, Regulations, Orders, and Decisions

21. All rules, regulations, orders, decisions, or other action prescribed, issued, made, or taken by the Interstate

Commerce Commission, the Public Utilities Commission of the District of Columbia, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia, and which are in force at the time this section takes effect, with respect to transportation or persons subject to this Act, shall remain in effect, and be enforceable under this Act and in the manner specified by this Act, according to their terms, as though they had been prescribed, issued, made, or taken by the Commission pursuant to this Act, unless and until otherwise provided by such Commission in the exercise of its powers under this Act.

* * *

OTHER ACTS

Act of March 3, 1925, 43 Stat. 1126, D.C. Code § 40-613

Nothing contained in this chapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this chapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443,

Act of February 27, 1931, 46 Stat. 1426, D.C. Code § 40-603(e)

(e) The commissioners may in the administration of this chapter, section or any provision of the Traffic Acts for the District, exercise any power or perform any duty conferred on them by this chapter through such officers and agents of the District as the commissioners may designate. The commissioners are further authorized and empowered to make, modify, repeal, and enforce reasonable rules and

regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, and the establishment and location of hack stands: *Provided*, That the commissioners shall establish and locate parking areas in the vicinity of governmental establishments for use only by members of Congress and governmental officials when on official business: *Provided further*, That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this chapter, to regulate their schedules and their loading and unloading, to locate their stops, and all platforms and loading zones and to require the appropriate marking thereof, is vested in the Public Service Commission of the District of Columbia: *Provided further*, That whenever any order, rule, or regulation of the Public Service Commission shall be made relative to the routing of common carrier vehicles, to the location of their stops, to the establishment or change in location of platforms, loading zones, or other spaces on the public highway to be reserved for any purpose whatsoever, or to the appropriate marking thereof, or whenever any order, rule, or regulation of the District commissioners shall be made which affects such routing, stops, platforms, zones, or spaces, said order, rule, or regulation shall, prior to promulgation, be referred to a joint board to be composed of the commissioners of the District of Columbia and the members of the Public Service Commission, which is hereby authorized and created. Such joint board may, by the affirmative action of any three members thereof, adopt rules and regulations which, when promulgated, shall be binding and shall have the full force and effect of law, and the engineer commissioner shall have but one vote. Any of said rules and regulations, after reasonable trial and within a reasonable time, may be changed by the joint board upon the request of the commissioners of the District of Columbia or of the Public Service Commission.

Act of August 9, 1935, 49 Stat. 543, Part II of the Interstate Commerce Act

Section 203(b)4, 49 U.S.C. sec. 303(b)4

(b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;

Section 209(a)(1), 49 U.S.C. sec. 309(a)(1)

(a) (1) Except as otherwise provided in this section and in section 310a of this title, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce or any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business: * * *

*** * * *Provided, further,* That nothing in this chapter shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national monument of the United States.**

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(I)



In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 978

**UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
PETITIONER**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL.**

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT**

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

The Washington Metropolitan Area Transit Commission (WMATC) was created to end "divided regulatory responsibility" over "mass transit service" in the Washington, D.C., metropolitan area. The question here is whether Congress, in assenting to its creation, intended that WMATC should also exercise jurisdiction over a very different kind of service, bearing no relation to its primary function, which is sought to be provided in an area subject to the exclusive authority of the National Park Service.

STATEMENT

In the Act of July 1, 1898, 30 Stat. 570, Congress placed the park system of the District of Columbia under the "exclusive charge and control" of the Chief of Engineers. This authority devolved to the Director of Public Buildings and Public Parks in the Act of February 26, 1925, 43 Stat. 983, and to the National Park Service¹ by virtue of Executive Order No. 6166, dated June 10, 1933, 5 U.S.C. 132 (note) (D.C. Code, Sec. 8-108). Lands required for additional parks in the District of Columbia, acquired by the National Capital Planning Commission pursuant to the Act of June 6, 1924, 43 Stat. 463, are also administered exclusively by the National Park Service, except such areas as may be assigned to the District of Columbia for playground purposes.

The original authority of the Public Utilities Commission of the District of Columbia to control traffic and bus operations in the District stems from the Act of February 27, 1931, 46 Stat. 1424, which, in turn, was framed as an amendment to the District of Columbia Traffic Act of 1925, 43 Stat. 1119. The latter statute contains a provision to the effect that:

Nothing contained in this Act shall be construed to interfere with the exclusive charge and control heretofore committed to the Chief of Engineers over the park system of the Dis-

¹ The National Park Service was created in 1916 (39 Stat. 535) as an agency of the Department of the Interior to "promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations * * *" (16 U.S.C. 1).

trict, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control. * * * [Section 16(b), Act of March 3, 1925, 43 Stat. 1126 (D.C. Code, Sec. 40-613 (1961 ed.)).]

It was against this background—a long-established and clearly demarcated separation of national park areas from the jurisdiction of District of Columbia agencies (including the Public Utilities Commission)—that Congress, in 1960, approved a compact negotiated by the Commonwealth of Virginia, the State of Maryland and the District of Columbia, designed to end “divided regulatory responsibility” over “mass transit service” in the Washington area. The compact sought to solve this problem by creating a commission comprised of one representative from each of the negotiating parties, with jurisdiction to establish rates and routes and otherwise regulate public transportation throughout the metropolitan area. The compact (74 Stat. 1031, 1036) excepts “transportation by the Federal Government” and Section 3 of the ratifying Act (74 Stat. 1050) declares that neither the Act nor the compact “shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities.”

Until the number of visitors to the national park areas in the District of Columbia reached problem

proportions, the National Park Service did not concern itself with means of transportation within the park enclaves. The public has traditionally reached these areas on foot, by private automobile or by sight-seeing buses. Parking and use of park roads have been permitted either by sufferance or by special permit issued by the National Park Service. Because sight-seeing bus companies operated throughout the city and only incidentally in the national park areas, they were licensed by the District of Columbia Public Utilities Commission or by its successor, WMATC.

By 1965, however, the number of visitors to the national park areas in Washington amounted to twelve million, with every indication that that figure would increase materially each year. This great increase in numbers, combined with the limited roadway and parking space available, made it imperative that the National Park Service take appropriate action to facilitate the movement of people within the Mall and the adjoining national park areas. In addition, a special need exists to provide lectures on the historical background and significance of each point of interest in order to give greater meaning to that "trip to Washington" which has become a must for most of our younger citizens, and many of their parents.

To meet that need, the National Park Service, in 1966, established an experimental "minibus" service whereby visitors could board a conveyance at the foot of the Capitol and eventually visit all of the monuments and points of interest in the Mall area. When this experiment proved a success, bids were solicited

from all interested parties for the providing of a similar service augmented by trained commentators capable of giving an interpretive discussion of each point of interest.² Of the bids received, that of petitioner Universal Interpretive Shuttle Corporation was the most satisfactory, and, on March 24, 1967, an interim short-term contract was awarded to that company. The basic ten-year contract (set out in Pet. App. C) was thereafter transmitted to Congress under 16 U.S.C. 17b-1, where no action was taken, and the agreement accordingly became effective. Under both the interim contract and the identical final form, the Secretary of the Interior is authorized to determine (a) the routes to be taken by the vehicles, (b) the type and number of mobile units to be furnished, (c) the number and schedule of trips to be made, (d) the rates to be charged and (e) the content of the interpretive narrations. In short, the contract contemplates continuous,

² The National Park Service, over a long period of time, has furnished transportation services in other national parks, by the use of contract carriers, pursuant to the authority contained in 16 U.S.C. 17b. This has always been a necessity in the more remote, larger park areas of the West. The States have not purported to assert control over these contract operations, which are specifically exempted from operation of the Interstate Commerce Act, 49 U.S.C. 303(b)(4). Thus, where a need for intra-park transportation services has existed, such services have traditionally been furnished by contracting with private transportation companies, free of control by local utility bodies or by the Interstate Commerce Commission. Moreover, legislation in 1965 (79 Stat. 969) expressly directed the Secretary of the Interior to "take such action as may be appropriate to encourage and enable private persons and corporations * * * to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service" (16 U.S.C. (Supp. II) 20a).

day-to-day supervision of the concessionaire's performance by the National Park Service (see Pet. 21).³

Shortly after the interim contract was awarded, WMATC brought suit against the successful concessionaire to enjoin operations under the contract until such time as the concessionaire had obtained a certificate of public convenience and necessity from that body. The United States filed a representation of interest and presented evidence in support of the defendant. The district court wrote an extensive opinion which thoroughly explored the various arguments made, concluded that a certificate of public convenience and necessity was not required, and dismissed the action (Pet. App. B). The court of appeals, with one judge dissenting, reversed, writing no opinion but instead entering an order stating that "[t]he various relevant statutory provisions, construed in relation one to the other," do not afford authority for the concessionaire to provide the contemplated service without a WMATC certificate (Pet. App. A). A petition for rehearing *en banc* was denied, with two judges dissenting.

³ More broadly, the National Park Service has developed a long-range master plan relating to the Mall which has been approved in substance by the National Capital Planning Commission. That plan contemplates the eventual location of parking and cross-streets underground and conversion of the central Mall area into a large open space reserved for pedestrians. An integral part of the plan calls for the elimination of all vehicular traffic in the area other than that of the type contemplated by the instant arrangement (see Pet. 6, 10).

DISCUSSION

Congress has consistently maintained a basic dichotomy between municipal and national affairs in legislating with respect to the District of Columbia. The decision of the court of appeals has upset this scheme by holding that a purely municipal law curtails the long-standing authority of the Secretary of the Interior in administering national park areas in the District of Columbia.* The question is a national not a local one. The persons who are affected by this decision are not primarily local residents of the Washington metropolitan area, but rather the millions of visitors from the 50 States and various foreign countries who come to Washington to visit the monuments of the past and the symbols of the present that can exist only in a nation's seat of government.

First and foremost, the District of Columbia is the *national* capital, and control of its major parks has always been vested in either the Corps of Engineers or the National Park Service. In particular, the great Mall in the city of Washington is a national park area ringed with buildings and monuments that annually attract millions of deeply interested and enthusiastic visitors. Of course, the District of Columbia, with its environs, is also the home of thousands of people who must live near where they work. Obviously, the Wash-

* As pointed out by the district court (Pet. App. 6, n. 1), virtually all of the contemplated route of the vehicles to be used in providing the interpretive shuttle service lies within national park areas and includes, in the main, the various streets which are located within the central Mall area.

ington area has distinct municipal transportation problems. With three separate sovereigns involved, the resolution of these problems requires careful cooperation. Such transportation problems, however, remain essentially local and their solution has little to do with the unique national status of Washington as the capital city.

Indeed, it is this national interest in the effective administration of the national park areas in the District of Columbia, for the benefit of all Americans, and foreign visitors as well, that is involved in the instant case. If the court below is correct, the tripartite WMATC, rather than the Secretary of the Interior, is presently authorized to determine (a) whether any transportation facilities are required within the national park areas, (b) the individual or corporation to whom the concession to provide such facilities must be given, (c) the type of service, the type of equipment and the routes to be followed, (d) the rates to be charged, and (e) the numerous other details inherent in a certificate of public convenience and necessity. It is not difficult to conceive of the confusion and conflict which would predictably result from a bifurcation of authority over non-commuter transportation in the national park areas. In addition, one who applies for a certificate of public convenience and necessity from WMATC might well become involved in extensive proceedings entailing delay and the introduction of issues that are purely extraneous to the concerns of the Secretary of the Interior. In requiring that a procedure established for a purely municipal purpose be followed to effectuate a considered decision of the Secretary relating to areas plainly

within his jurisdiction, the decision of the court below seriously impairs the Secretary's ability to give enlightened direction in a matter of important interest to the American public generally.

Assertion of jurisdiction by WMATC was apparently prompted solely by a literal reading of language in the compact which states that it shall apply to all transportation for hire "in the Metropolitan District." Technically, of course, the national park areas in question are within "the Metropolitan District," and it is a conceivable, though hardly necessary, conclusion that the contemplated service constitutes "transportation for hire" within the meaning of the compact. But that construction gives no scope to the exception of "transportation by the Federal government" in the same section of the compact, nor to the reference to the police powers of the Director of the National Park Service in another section.⁵ Moreover, Congress did not purport, in approving the compact, to repeal existing legislation giving the National Park Service "exclusive charge and control" over the capital city's park areas.⁶ Rather, a fair

⁵ The term "police powers" necessarily includes the full scope of the existing authority delegated by Congress to an executive agency to make rules and regulations relating to property of the United States. *Campfield v. United States*, 167 U.S. 518, 525; *State of Tennessee v. United States*, 256 F. 2d 244, 258 (C.A. 6).

⁶ And since acts of Congress which are assertedly in conflict should be interpreted, if possible, to provide a harmonious result (see *United States v. Wittek*, 337 U.S. 346, 358-360), the obvious intention of the lawmaker—to provide a solution for pressing interstate mass transit problems by assenting to the creation of the WMATC—should here prevail over the literal language of the compact, if indeed any actual conflict is presented (see *Lynch v. Overholser*, 369 U.S. 705, 710).

reading of the language of the compact is that Congress intended WMATC to have authority to accomplish the purposes for which it was established, but not jurisdiction over wholly extraneous matters, particularly where such authority would have a detrimental effect on a subject of national, not merely local, concern.

The question presented is an important one. It does not involve merely a local controversy. Rather, the issue is of national concern, and directly affects the power of the Secretary of the Interior to administer national park areas in the interest of citizens from every part of the nation, and foreign visitors as well. In our view, the question was wrongly decided by the court below. We urge that the petition for a writ of certiorari be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1968.

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 978

**UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
PETITIONER**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

STATEMENT

Combining natural beauty with the presence of national monuments and museums, the great Mall in the Nation's capital each year attracts a growing number of visitors from every State in the Union and from foreign nations as well. To provide for these visitors is the responsibility of the National Park Service. The issue in this case is whether the Congress, in 1960, in approving the creation of the Washington Metropolitan Area Transit Commission to end "divided regulatory responsibility" over "mass transit

service" in the Washington metropolitan area, intended that the newly created Commission should also exercise jurisdiction over a "minibus" service to be provided by a Department of the Interior contract concessionaire in a compact park area subject to the exclusive authority of the National Park Service.

The factual situation which led to the institution of this litigation is a simple one. By 1965 the increasing number of visitors to the Mall led the Secretary of the Interior to conclude that some effective means of transportation within the park area was required, which would, at the same time, permit a more meaningful interpretation of the points of interest visited. Because the National Park Service normally provides transportation and sightseeing services in the national parks through concessionaires, bids were sought for the operation of a closely supervised interpretive tour of the Mall area. The successful bidder was petitioner Universal Interpretive Shuttle Corporation.

After a temporary contract had been entered into and while a permanent contract was awaiting the negative approval of Congress as required by 16 U.S.C. 17b-1, the Transit Commission instituted this action to enjoin Universal from furnishing the service without first having obtained a certificate of public convenience and necessity from the Commission. The United States was permitted to file a representation of interest and to present evidence in support of Universal.

After a trial, the district court dismissed the suit, writing a detailed opinion which thoroughly discussed the various contentions made (App. 97-112). The

court of appeals, with one judge dissenting, reversed, writing no opinion but merely entering an order stating that "the various relevant statutory provisions, construed in relation one to the other," do not afford authority for the concessionaire to provide the contemplated service without a transit commission certificate (App. 113-114). A petition for rehearing *en banc* was denied, with two judges dissenting (App. 115). Certiorari was granted, upon the application of petitioner, supported by the United States, on March 4, 1968 (App. 116).

ARGUMENT

I. CONGRESS DID NOT INTEND TO IMPAIR THE NATIONAL PARK SERVICE'S EXCLUSIVE AUTHORITY OVER NATIONAL PARK AREAS IN THE DISTRICT OF COLUMBIA IN APPROVING THE COMPACT CREATING THE WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

1. Reduced to its essentials, the issue involved in the instant case is simply one of statutory construction. There can be no dispute that the policy of Congress in legislating for the District of Columbia has consistently contemplated that matters of national concern, such as government buildings and national monuments and parks, should be administered by federal agencies. At the same time, the administration of municipal affairs, *i.e.*, those matters commonly handled at the local level, has been, with some reservations, assigned to agencies of the District of Columbia government.

Thus, in the Act of July 1, 1898 (30 Stat. 570), Congress placed the park system of the District of Columbia under the "exclusive charge and control" of

the Chief of Engineers. This authority devolved to the Director of Public Buildings and Public Parks in the Act of February 26, 1925 (43 Stat. 983), and to the National Park Service by virtue of Executive Order No. 6166, dated June 10, 1933, 5 U.S.C. 132 (note) (D.C. Code, Sec. 8-108). Lands required for additional parks in the District of Columbia, acquired by the National Capital Planning Commission pursuant to the Act of June 6, 1924 (43 Stat. 463), are also administered exclusively by the National Park Service, except such areas as may be assigned to the District of Columbia for playground purposes.

This "exclusive charge and control" has always meant not only responsibility for the physical upkeep of the parks, the planting of trees, the construction of roads and walkways and the repair of monuments, but has included throughout authority to regulate all aspects of park use, to provide police protection and control and to devise means for increasing the attraction and utility of the national park areas (see 16 U.S.C. 3).

2. The District of Columbia Public Utilities Commission was established by the Act of March 4, 1913 (37 Stat. 974, 977), for the regulation of gas and electric companies, street railroad corporations and common carriers engaged in the transportation of passengers "from one point to another within the Dis-

* The National Park Service was created in 1916 (39 Stat. 535) as an agency of the Department of the Interior to "promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations * * *" (16 U.S.C. 1).

trict of Columbia." When the bus began to compete with the streetcar as a means of transportation for hire, specific authority to regulate the routing and scheduling of all common carriers "within the District of Columbia" was granted to the Public Utilities Commission.² Significantly, however, this was accomplished by an amendment to the District of Columbia Traffic Act of March 25, 1925 (43 Stat. 1119), which, in Section 16(b), contained the following express provision:

Nothing contained in this Act shall be construed to interfere with the exclusive charge and control heretofore committed to the Chief of Engineers over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control * * *. [43 Stat. 1126 (D.C. Code, Sec. 40-613).]

Thus, at the time the compact creating the Transit Commission was approved by Congress in 1960, the Public Utilities Commission of the District of Columbia (now the Public Service Commission) concerned itself with normal regulation of common carrier bus operations, routes, fares, etc., in the non-park areas of the District. Neither the Public Utilities Commission nor any other agency of the District government had any substantial authority regarding traffic or the regulation of public transportation in the Capital's

² Act of February 27, 1931 (46 Stat. 1424, 1426).

park areas. If an occasional bus line in its routing used a street in the park areas, this was done because the National Park Service did not object—not because authority to route a bus line through those areas was vested in a local agency. And if certificated sightseeing buses brought visitors into the park areas, they did so because such action was approved or tolerated by the National Park Service—not because of any authority predicated on their licenses.

As a practical matter, until the number of visitors to the national park areas in the District of Columbia reached problem proportions, the National Park Service did not concern itself with means of transportation within the park enclaves. The public has traditionally reached these areas by foot, by private automobiles or by sightseeing buses. Parking and use of park roads have been permitted either by sufferance or by special permit issued by the National Park Service. Because sightseeing bus companies operated throughout the city and only incidentally in national park areas, they were licensed by the District of Columbia Public Utilities Commission or by its successor, the Transit Commission.

3. With the rapid growth of the Virginia and Maryland suburbs after World War II, the initially intrastate nature of the functions assigned to the three separate public utilities commissions concerned with the regulation of common carriers in the Washington metropolitan area took on increasing complexities of an interstate nature. Following a study by the National Regional Planning Council and after successful negotiations between representatives of Virginia,

Maryland and the District of Columbia, Congress, by a joint resolution approved September 15, 1960 (74 Stat. 1031, now D.C. Code, Sec. 1-1410 *et seq.*), gave its consent to a compact which, in substance, provided for the creation of a new commission. That body was to exercise the mass transit regulatory functions previously exercised, in the Washington metropolitan area, by four separate agencies—the Interstate Commerce Commission and the pertinent commissions of Virginia, Maryland and the District of Columbia.³

Nowhere in this legislation or in its legislative history⁴ is there any indication of congressional intent to diminish or impair the exclusive jurisdiction of the National Park Service over the administration of national park areas. That exclusive jurisdiction, moreover, plainly includes the authority of that governmental agency to determine the need for a service to facilitate the enjoyment of visitors to the park areas and to determine the details of how that service

³ As succinctly expressed in H. Rep. No. 1621, 86th Cong., 2d Sess., p. 26, "The powers to be exercised by the * * * Commission under the compact are comparable to those presently exercised by the Public Utilities Commission of the District of Columbia, and, similarly, would not unlawfully impinge upon the legislative power of the Congress over the District of Columbia." Similarly, in S. Rep. No. 1906, 86th Cong., 2d Sess., p. 2, it was pointed out that "the compact centralizes to a great degree in a single agency * * * the regulatory powers of private transit now shared by four regulatory agencies."

⁴ See H. Rep. No. 1621, 86th Cong., 2d Sess.; S. Rep. No. 1906, 86th Cong., 2d Sess.; Hearings before Subcommittee No. 3 of the House Judiciary Committee on House J. Res. 402, 86th Cong., 1st Sess., Part I (August 26, 1959); *id.*, 86th Cong., 2d Sess., Part II (March 9, 1960); Hearings before the Special Subcommittee of the Senate Judiciary Committee on House J. Res. 402, 86th Cong., 2d Sess. (June 24 and 25, 1960).

will be provided. All that the Secretary of the Interior has done here is to attempt to arrange an interpretive shuttle service which will give visitors a meaningful tour of park areas committed to his exclusive control. That Congress did nothing in 1960 to affect his authority to do so seems clear; once the nature of the service proposed and the purpose underlying the creation of the Transit Commission are understood.

Respondents purport to find a contrary congressional intent in a provision of Title II, Art. XII, Section 1(a), of the compact (74 Stat. 1035), which states that the agreement shall apply "to the transportation for hire by any carrier of persons between any points in the Metropolitan District."⁵ Given the background of this legislation, however, it is clear that the phrase "transportation for hire," as used in this section, pertains to the mass transit activities previously regulated by the separate commissions, and the phrase "any points in the Metropolitan District" emphasizes the interstate locale of the new commission's jurisdiction.⁶

⁵ Respondents' reliance on the decision and opinion of the court of appeals in *D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Comm'n*, 376 F. 2d 765 (C.A.D.C.), certiorari denied, 389 U.S. 847, seems misplaced. In the very passage from the court's opinion quoted by respondents, it was pointed out that "[n]o one could engage in the transportation covered by the Compact except upon its terms * * *" (*id.* at 767 [emphasis added]). Of course, the question involved here is whether the contemplated service constitutes "transportation covered by the Compact."

⁶ Respondents' reference to the fact that certain non-commuter service of a sightseeing nature has been held to be within Transit Commission jurisdiction is not pertinent. Authority

Literally speaking, of course, the service to be furnished by Universal will be "transportation for hire" and, literally speaking, the Mall area is located within the metropolitan district. A merely literal interpretation, however, would not be in keeping with the obvious intention of the lawmaker. *E.g.*, *Lynch v. Overholser*, 369 U.S. 705, 710; *United States v. Witkovich*, 353 U.S. 194, 199; *Harrison v. Northern Trust Co.*, 317 U.S. 476, 479. And this Court has never been reluctant to give a narrow construction to broad language used by Congress when it is evident, from the circumstances surrounding the enactment of the legislation, that the congressional purpose was a more limited one. *E.g.*, *Rathbun v. United States*, 355 U.S. 107, 109; *Markham v. Cabell*, 326 U.S. 404, 409; *United States v. American Trucking Ass'ns*, 310 U.S. 534, 543-544. That approach toward statutory construction was followed here by the district court. In rejecting the Transit Commission's reliance on the literal language of one provision in the compact approved by Congress, the court stated that "[t]here is nothing in the Compact or the history of the Compact which would hint that it was intended to limit the exclusive jurisdiction of the Secretary of the Interior to

over such service is predicated essentially on the fact that such control was previously exercised by the various regulatory agencies whose jurisdiction was superseded by the new commission. Moreover, such sightseeing and charter service is distinguishable from the service here proposed in that those carriers operate not only within the confines of national park areas but pick up and deposit persons outside those areas and, as a general matter, traverse the public streets and highways for considerable distances.

maintain and operate the Park enclave, and, if he so desired, to run a tram within the Park enclave for the edification of visitors" (App. 108).⁷ In short, Congress did not purport, in approving the compact, to repeal existing legislation giving the National Park Service "exclusive charge and control" over national park areas in the District. Repeals by implication are of course not favored, and acts of Congress which are assertedly in conflict should be interpreted, if possible, to produce a harmonious result. *E.g.*, *Posadas v. National City Bank*, 296 U.S. 497, 503; *United States v. Wittek*, 337 U.S. 346, 358-360. Accordingly, the language of the compact should be read against the background of the plain and overriding intention of the lawmaker—to provide a solution for pressing interstate mass transit problems in the Washington area by assenting to the creation of the Transit Commission. So read, it is clear that the contemplated service is outside the scope of that body's jurisdiction. Indeed, the purpose for which the new commission was created is wholly extraneous to the incidental movement of visitors *in* national park areas by a government concessionaire.

⁷ Additional support for its conclusion was found by the district court in the fact that the "specific list of the laws which the Congress thought would be suspended during the operation of the Compact * * * does not contain any law or regulation under which the Secretary has exercised his jurisdiction over the D.C. Park System" (App. 108-109; see H. Rep. No. 1621, 86th Cong., 2d Sess., pp. 29-30).

II. EXPRESS PROVISIONS OF THE APPROVING LEGISLATION AND THE COMPACT EXCLUDE THE PROPOSED SERVICE FROM THE TRANSIT COMMISSION'S JURISDICTION

Apart from the fact that the background and context of the approving legislation confirm that Congress did not intend to interfere with the National Park Service's exclusive jurisdiction over the Mall area, specific provisions of that legislation and the compact itself exclude the contemplated service from Transit Commission control.

1. In the legislation approving the compact (74 Stat. 1051), Congress specifically provided that nothing in that statute or in the compact "shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities." Given the purpose of this legislation and the absence of any reference in the legislative history to any proposed transfer of control over activities in national park areas (see note 4, *supra*), the quoted language alone is sufficient to indicate that a grant of authority over "transportation for hire * * * in the Metropolitan District" did not vest in the newly created commission jurisdiction over the proposed service.

Respondents seek to minimize the significance of this provision by noting that when the approving legislation was considered the Assistant Secretary of the Interior suggested that the language "police powers * * * of the Director of the National Park Service" b

changed to "authority and responsibility of the Secretary of the Interior" derived from acts of Congress pertaining to the National Park System (H. Rep. No. 1621, 86th Cong., 2d Sess., pp. 48-49). No action was taken on this suggestion. In the absence of any expression of reasons why the suggestion was not adopted, congressional inaction in this regard cannot properly be viewed as undermining any reliance by the Secretary on the "police powers" exclusion or as providing any affirmative support for respondents' position. Indeed, it is not unlikely that Congress simply believed that the exception of "police powers * * * of the Director of the National Park Service" was as effective to maintain the status quo as was the use of the term "authority and responsibility of the Secretary of the Interior." Without conjecturing about the committee members' subjective reaction to the Secretary's suggestion,⁸ it is enough to say that the authority a governmental agency exercises in the administration of property owned by the United States has often been referred to by the courts as a "police power." In particular, the term "police power" neces-

⁸ It should be noted that the Secretary referred to the changes suggested as "clarifying amendments" in view of his concern that the term "police powers" was not sufficiently "descriptive of the authority and responsibilities of the Director of the National Park Service * * *" (H. Rep. No. 1621, 86th Cong., 2d Sess., p. 49). It is quite possible that the Secretary's suggestion was dismissed as an unnecessary refinement. The legislation was not conceived or drafted with any intent to affect the operation of national park areas, and a request that the language be redrafted in its final stages merely to make more certain what was already clear might well be expected not to fall upon hospitable ground.

sarily includes the full scope of existing authority delegated by the Congress to an executive agency to make rules and regulations relating to property of the United States. *Berman v. Parker*, 348 U.S. 26, 32; *Camfield v. United States*, 167 U.S. 518, 525; *State of Tennessee v. United States*, 256 F. 2d 244, 258 (C.A. 6); *Robbins v. United States*, 284 Fed. 39, 45 (C.A. 8).

2. Language in the compact itself similarly provides for exclusion of the proposed service from Transit Commission regulation. In Title II, Art. XII, Section 1(a) (74 Stat. 1035, 1036), the compact specifically states that the jurisdiction of the new commission over "transportation for hire" would not include "transportation by the Federal Government, the signatories hereto, or any political subdivision thereof."* Even aside from the considerations already advanced, the foregoing exception leaves no doubt that a minibus service on the Mall, if operated directly by employees of the National Park Service, would not require a certificate of public convenience and necessity from the Commission. Respondents have consistently conceded this. But they refuse to accept the proposition that the identical service, if provided by a closely controlled government concessionaire, is equally "transportation by the Federal Government" and is similarly excepted under this specific provision. This line of reasoning, however, was the alternative basis of the district court's decision. Noting "the high degree of control

* Among other exemptions provided for in the same section are school buses, transportation by water and transportation for hire solely within the Commonwealth of Virginia.

which the Secretary exercises over this concessionaire," that court rejected the Commission's argument that the service must be provided by the government directly, and not through an agent, to come within the compact's excepting language (App. 109-110). That conclusion, we submit, properly reflects the purpose of the exemption for governmental transportation.

The National Park Service has traditionally offered services to the public through agencies of private enterprise. In the Act of May 26, 1930 (46 Stat. 382), now 16 U.S.C. 17b, Congress specifically authorized "the Secretary of the Interior * * * to contract for services or other accommodations provided in the national parks." More recently, in the Act of October 9, 1965 (79 Stat. 969), 16 U.S.C. (Supp. I, 1965) 20a, the Secretary of the Interior was directed to "take such action as may be appropriate to encourage and enable private persons and corporations * * * to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service."¹⁰ The view that services in national parks, including those relating to transportation, may be furnished by the United States either directly or through a contract arrangement with a private concessionaire was specifically commented upon in *United States v. Gray Line Water Tours of*

¹⁰ See S. Rep. No. 765, 89th Cong., 1st Sess., p. 2, which is part of the legislative history of this enactment and which points out that "[t]he Government now depends heavily, and must continue to depend heavily, on private entrepreneurs to provide visitors to the national park system with necessary facilities and services."

Charleston, 311 F. 2d 779, 781 (C.A. 4). There the court upheld the authority of the National Park Service to grant a preferential concession to a private company for the transfer of visitors by small boat to Fort Sumter, and stated (*ibid.*):

The concession, we hold, was quite within the purpose and intendment of the Act setting Fort Sumter apart as a national monument. The Congress declared it should be "for the benefit and enjoyment of the people of the United States" but, obviously, to be made available to the public, water craft of some kind had to be provided. *It, of course, could be undertaken either by the United States directly or through a private waterman.* [Emphasis added.]

We recognize, of course, that government contractors are not always to be equated with the government itself, such as for purposes of claiming tax immunity. But in other contexts such contractors have been held immune from State regulation where application of such authority "would give the State's licensing board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the expressed federal policy." *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 190; cf. *Yearsley v. Ross Construction Co.*, 309 U.S. 18. In the present case, for the purpose of interpreting this section of the compact, it would seem controlling that to administer the park areas the Secretary of the Interior must be able to determine such basic questions as the need for a mini-bus service in the park, the type of equipment, the scheduling, the fees to be charged and the type of in-

terpretive service to be furnished. All of these matters, and numerous other details, are inherent in and would necessarily be considered by a regulatory body in determining whether to grant an applicant a certificate of public convenience and necessity. Not only would the tripartite Transit Commission, under respondents' view, have the sole authority to make such determinations as an initial matter; that body's jurisdiction would need to be invoked each time the Secretary determined that a change in the manner of service was required.

It is not difficult to conceive of the confusion and conflict which would predictably result from such a bifurcation of authority over non-commuter transportation in national park areas. In addition, one who applies for a certificate from the Commission, or an amendment to an existing certificate, might well become involved in extensive proceedings entailing delay and the introduction of issues wholly extraneous to the concerns of the Secretary. Indeed, one spring and summer has passed and another will be gone without the contemplated service being available. If like difficulties are encountered by prospective contract concessionaires, it might be expected that the Secretary will be unable to interest companies in seeking to provide such a service. Should that eventuate, not only will the Secretary's control over the utilization and development of national park areas like the Mall be effectively thwarted, but the significant public interest in such service will not be effectuated. That is hardly a result which Congress, which specifically directed the Secretary to provide services in national

park areas through private concessionaries (16 U.S.C. (Supp. I, 1965) 20a), should be viewed as having intended in approving the compact creating the Washington Metropolitan Area Transit Commission.

Respondents maintain, however, that no substantial problems will result if the Commission is found to have jurisdiction over the contemplated service. Any difficulties which might develop can be resolved, they say, in a spirit of cooperation. Perhaps that is so, but it seems obvious that if the Transit Commission has regulatory authority over the proposed service, it will have the final say on all important matters relating to the concessionaire's obligation and performance, the Secretary and company notwithstanding. If the Commission intends to give controlling weight to the Secretary's views regarding service such as that proposed here, it is difficult to perceive the point of the instant litigation. If, on the other hand, the Commission intends to regulate government concessionaires like petitioner Universal in a fashion substantially similar to its regulation of other licensees, then the potential for dispute and disagreement between that body and the Secretary is both considerable and pervasive. At the very least, the Transit Commission and the Secretary would significantly duplicate each other's regulatory activities. The likely result would be that that body would exercise control over matters entirely outside the scope of its legitimate area of concern, and thus not only duplicate but frustrate the Secretary's aims.

It should be noted, moreover, that the contract between the Secretary and Universal contemplates

continuous, day-to-day supervision of the concessionaire's performance by the National Park Service. Universal's personnel will wear uniforms approved by the Park Service and the minibuses will bear a Park Service emblem. Universal's situation is thus not analagous to an independent contractor selling a service to the government, and it is in this context that respondents' suggested distinction between transportation provided directly by a governmental agency and transportation provided on behalf of the government through a private company should be evaluated.

Respondents say that the compact's exception for transportation by the federal government applies only where the governmental agency itself is rendering the service, and not where it is provided for the government pursuant to contract. Moreover, they add, the contemplated service will actually be provided for the public in any event, and not the government. But the very point is that the service is one to be provided by the government, albeit through a private instrumentality, in order to serve a public need. It seems quite anomalous to read the compact as exempting a service in national park areas if performed solely by government employees, but not the same service if the government determines to provide it through a private instrumentality, subject to its comprehensive supervision. The same functions will be performed, the same routes followed, the same District streets crossed—regardless of whether the Secretary or his agent in fact provides the service. In short, the impact on matters and areas properly within the Commission's jurisdiction will be the same whether one or

the other in fact performs the service. That Congress, in approving the compact, intended that a line such as respondents suggest be drawn seems doubtful. Rather, it appears, the congressional preference would be for substance over form in construing this exemption. Accordingly, the transportation service here involved, to the extent that it comes within the provisions of the compact at all, should be regarded as constituting "transportation by the Federal Government."

III. OTHER FACTORS CONFIRM THE EXCLUSION OF THE PROPOSED SERVICE FROM THE TRANSIT COMMISSION'S JURISDICTION

1. One consideration that should not be lost sight of here is that the contemplated service will be offered entirely within the limits of a federal enclave. There will be no use of District of Columbia streets, no substantial involvement with commuter traffic, and no significant conflict with any areas of Transit Commission control. The fact that crossings of District streets will be made at Third, Fourth, Seventh, Ninth and Fourteenth Streets is only incidental. Furthermore, even these streets are subject to application of the Secretary's regulations pursuant to the provisions of the Act of March 4, 1909 (35 Stat. 994 (D.C. Code, Sec. 8-144)).¹¹ Moreover, one of the Secretary's pur-

¹¹ In the affected area, Twelfth Street has already been placed underground and construction has been initiated to do the same with Third and Ninth Streets. A long-range master plan has been approved in substance by the National Capital Planning Commission which contemplates the tunneling of all the present north-south crossings of the Mall and the conversion of the area into a large open space reserved for pedestrians. An integral part of that plan calls for the elimination of all

poses is to reduce traffic congestion in the Mall area—a development which would seem to be helpful to the Commission in its regulation of public mass transit in and around that national park area.¹²

2. Respondents place some reliance on certain provisions of the Interstate Commerce Act, 49 U.S.C. 303(b)(4) and 309(a)(1), which exclude from that Commission's jurisdiction "motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments," except in regard to matters "relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment * * *." They assert that this legislation shows that the Secretary lacked "exclusive charge and control" over all aspects of transportation in national park areas prior to the creation of the Transit Commission. And they seem to argue that the "police powers" exception in the legislation approving the compact is somehow rendered less significant in light of the ICC's limited control over certain aspects of transportation controlled by the Secretary in national park areas. It is not clear what such a narrow and appropriate exception from the Secretary's ex-

vehicular traffic in the area other than that of the type contemplated by the instant arrangement.

¹² In addition, although we do not attempt to develop the point at any length, it seems at least questionable whether what is essentially a round-trip, interpretive shuttle service in one limited and defined national park area constitutes "transportation . . . between any points"—in the language of the compact—except in the most literal sense of that phrase.

clusive authority over such transportation has to do with the scope of the National Park Service's police power, as referred to in subsequent legislation on a distinct subject. Moreover, it could hardly have been the intent of Congress to grant a more general jurisdiction over transportation in national park areas in the District of Columbia to the Transit Commission—which is effectively controlled by representatives of Maryland and Virginia. Such authority was specifically withheld from the federally created Interstate Commerce Commission, even though that body was otherwise given jurisdiction over transportation in “any reservation under the exclusive jurisdiction of the United States” (49 U.S.C. 309(a)(1)).

Finally, a point raised by respondent D.C. Transit System, Inc., should be mentioned. That respondent, at various stages of this litigation, referred to the provisions of Section 3 of its franchise as an alternative ground for its contention that the government's concessionaire must obtain a certificate of public convenience and necessity from the Transit Commission. This contention was rejected by the district court (see App. 110-112), but was not reached by the court of appeals, in light of its reversal on other grounds. In any event, reliance on Section 3 of the D.C. Transit franchise is misplaced, and it adds nothing to respondent's position.

In pertinent part, that franchise clause (Act of July 24, 1956, 70 Stat. 598) provides that “[n]o competitive * * * bus line, that is, bus * * * line for the transportation of passengers of the character which runs over a given route on a fixed schedule,

shall be established to operate in the District of Columbia without prior issuance of a certificate by the Public Utilities Commission * * *." Thus, that section applies only to the transportation of "over a given route on a fixed schedule," i.e., to the regular schedules and routes that constitute the essence of normal bus service in a metropolitan area. D.C. Transit does not contend that this provision gives it an exclusive right to engage in sightseeing activities in the District of Columbia. Indeed, it is clear that the section does not apply to competitive sightseeing activities such as those carried on by other respondents (Tr. 55-57). Accordingly, it cannot be properly construed as including a reference to services such as those contemplated under the government's contract with petitioner Universal (Tr. 81-82).

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed and the cause remanded for reinstatement of the district court's judgment dismissing the action.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

CLYDE O. MARTZ,
Assistant Attorney General.

FRANCIS X. BEYTAGH, Jr.,
Assistant to the Solicitor General.

S. BILLINGSLEY HILL,
THOS. L. McKEVITT,
Attorneys.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. ~~19~~ 19

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR PETITIONER

Of Counsel:

ROSENFELD, MEYER & SUSMAN
9601 Wilshire Boulevard
Beverly Hills,
California, 90210

ARENT, FOX, KINTNER,
PLOTKIN & KAHN
1815 H Street, N.W.
Washington, D.C., 20006

May, 1968

JEFFREY L. NAGIN
ALLEN E. SUSMAN
9601 Wilshire Boulevard
Beverly Hills, California, 90210

RALPH S. CUNNINGHAM, JR.
THOMAS P. MEEHAN
1815 H Street, N.W.
Washington, D.C., 20006

Attorneys for Petitioner

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IN THE
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No. 978

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,
Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR PETITIONER.

OPINIONS BELOW

The unreported opinion of the District Court is set forth in the Appendix (App. 97). The Court of Appeals filed no opinion other than that contained in its order which is unreported (App. 113).

JURISDICTION

The order of the Court of Appeals was entered on June 13, 1967. A petition for rehearing *en banc* was denied on October 3, 1967. The petition for a writ of certiorari was filed on December 31, 1967 and granted on March 4, 1968. The jurisdiction of this Court rests on 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Did Congress, in approving the interstate compact creating the Washington Metropolitan Area Transit Commission, intend to take away from the executive branch of the United States Government, its exclusive control of the central Mall area of the District of Columbia and to give the Washington Metropolitan Area Transit Commission the power to prevent the United States from conducting, through a private concessioner, a service which provides a narrative description of points of interest within the central Mall area while carrying visitors within the area in trams?

2. Is a mobile service provided by a concessioner of the United States within the central Mall area for the purpose of providing visitors a narrative description concerning points of national interest, "transportation for hire" within the meaning of the interstate compact creating the Washington Metropolitan Area Transit Commission?

3. Does the Washington Metropolitan Area Transit Commission whose jurisdiction is limited to the regulation of persons providing "transportation for hire . . . between any points in the Metropolitan District" have

regulatory jurisdiction over a mobile interpretive service conducted within the central Mall area which service originates and terminates at the same point, with no passengers embarking or debarking en route?

4. Is a mobile interpretive service utilizing vehicles bearing the National Park Service emblem and operated by a concessioner on federally owned and managed park lands under a contract with the Federal Government which provides for the control of every detail of operation by the Secretary of the Interior and for a division of gross proceeds between the concessioner and the Government, transportation "by the Federal Government" within the meaning of the interstate compact creating the Washington Metropolitan Area Transit Commission?

5. In the Congressionally enacted franchise of a common carrier, D. C. Transit System, Inc., which prohibits the operation of a competitive bus or railway line transporting passengers over a given route on a fixed schedule without a certificate being issued by a local regulatory agency, violated by the operation without a certificate of a mobile interpretive service within the central Mall area when the Secretary of the Interior retains the right from time-to-time to change rates, routes and schedules of the service?

6. Do the respondents who now operate private sight-seeing tours on the Mall at the sufferance of the Secretary of the Interior have standing or any substantive right to seek an injunction prohibiting the operation of the service proposed by the Secretary?

STATUTES INVOLVED

The principal statutory provisions involved are as follows:

16 U.S.C. §§ 1, 1c, 2, 3, 17b, 20, 20a-g; D. C. Code §§ 8-108, 8-135, 8-144; The Washington Metropolitan Area Transit Regulation Compact as approved by Act of September 15, 1960, 74 Stat. 1031, D. C. Code §§ 1-1410 to 1-1412; Act of July 24, 1956, 70 Stat. 598. Relevant portions of the aforementioned statutes and Compact are printed in Appendix A of this brief.

STATEMENT OF THE CASE

On March 24, 1967 Universal Interpretive Shuttle Corporation (Universal) executed a Contract (the Contract), which is reproduced at App. 67-87, with the United States of America for the operation by Universal of an interpretive shuttle service in the central Mall area of Washington, D. C. as a concessioner of the United States. Upon the expiration of a 60-day waiting period in which the Contract was submitted to Congress the Contract was executed by the United States acting in this behalf by the Secretary of the Interior (Secretary) through the Director of the National Park Service (Director) and became a mutually binding agreement.¹

1. The Proceedings Below

The Washington Metropolitan Area Transit Commission (WMATC), an agency created by an interstate compact between the states of Maryland and Virginia and the District of Columbia, with the consent of Con-

¹ The United States and Universal also entered into an interim agreement dated March 24, 1967 in order to permit the initiation of the interpretive service during the Spring of 1967; the interim agreement stated that it would expire no later than June 30, 1967.

gress, Act of September 15, 1960, 74 Stat. 1031, D. C. Code § 1-1410, commenced this action on March 31, 1967 in the United States District Court for the District of Columbia to enjoin Universal from operating under the Contract.

D. C. Transit System, Inc. (D. C. Transit), Washington Sightseeing Tours, Inc., Blue Lines, Inc., and White House Sightseeing Corporation, each of which holds a certificate from WMATC to operate charter and sightseeing services (D. C. Transit also holds a certificate to perform regular route service) intervened as parties plaintiff. The United States filed a representation of interest in support of Universal's position and participated in all the proceedings in the District Court.

The District Court dismissed the complaint and filed a written opinion which is unreported (App. 97-112). All of the plaintiffs thereafter appealed to the United States Court of Appeals for the District of Columbia.

The United States as *amicus curiae* and Universal sought affirmance in the Court of Appeals of the District Court's judgment, but a three-judge panel of the Court of Appeals (one judge dissenting) in an unreported order (App. 113) reversed the order of the District Court. Universal petitioned the Court of Appeals for an *en banc* rehearing and the United States filed an *amicus curiae* brief in support of Universal's petition. On October 3, 1967, the petition was denied (two judges dissenting) (App. 114). Universal then filed a petition for a writ of certiorari in this Court and the United States as *amicus curiae* filed a memorandum in support of Universal's petition. The petition was granted by this Court on March 4, 1968 (App. 116).

2. Federal Actions Concerning the Mall

The central Mall area is included within the National Park System and as such is specifically committed to the "exclusive charge and control" of the Director of the National Park Service, a subordinate of the Secretary of the Interior, by the Act of July 1, 1898, 30 Stat. 570, as amended, D. C. Code § 8-108. It is bounded on the north by the White House, on the east by the Grant Memorial, on the south by the Jefferson Memorial, and on the west by the Lincoln Memorial (App. 88). The central Mall, which contains and is flanked by some of the foremost national shrines and many points of historic, educational, aesthetic and patriotic importance, is a focal point of interest in the Federal City.

Estimates relied upon by the Secretary are that more than 12 million persons visited the central Mall area in 1965 (App. 68, 98) and the Director of the National Park Service believes that this number will substantially increase in the near future (App. 68). According to the Director, the present parking and traffic circulation facilities within the central Mall area are already taxed to the maximum, and "with two or three times the number of people expected in the years ahead, the situation will become intolerable if permitted to continue" (App. 90).

In order to alleviate vehicular congestion within the Mall and to enhance the aesthetic qualities of the Mall, the Park Service has developed a long-range master plan which has been approved in concept by the National Capital Planning Commission. The plan contemplates placing parking areas and bisecting streets underground and converting the central Mall into a

vast open area reserved for pedestrians. An integral part of the plan calls for the elimination of all vehicular traffic within the Mall other than trackless trains (trams) of the type specified by the Contract (App. 90).

The Director also has long been concerned with an ever increasing need to provide visitors with a well organized, accurate, interesting, and intelligible information program concerning the many national shrines and points of interest in the Mall area (App. 38). The Director stated that:

"The number of people available to answer questions, giving an explanation of the relationship of the Mall to the L'Enfant and McMillan plans, the history of the Smithsonian Institution, the White House, the Capitol, the memorial structures and other information required to afford the visitor a meaningful experience, is insufficient to meet visitor needs" (App. 90-91).

Furthermore, due to the limited capacity for accommodating visitors within the various shrines and points of interest, the Director has concluded that, "... there is a great need now to do interpretation outside of the memorials themselves and the only place that this likely can be done, in our view, is on the Mall in the vicinity of these great memorials" (App. 90).

In order to meet these problems, the Director commissioned a survey by a private consultant. As a result of this survey and other studies previously made for the Mall Master Plan, the Director stated that:

"... I determined that new and increased interpretive services were an essential ingredient needed for proper management. Ideas were sought

which might be utilized in solving one or more of the administrative problems presented, and when the interpretive tour was brought to my attention I decided that it provided an excellent method by which several problem situations could be alleviated, while at the same time providing a maximum beneficial result to visitors." (App. 91).

In order to test this view, in the Fall of 1966 the Park Service instituted a six-week trial of an interpretive service in the central Mall area, using open-air vehicles. The Director determined that the trial demonstrated "overwhelming approval of the interpretive concept" (App. 91). The Director then concluded that, "proper park management requires this interpretive service, and this has been determined by us to be necessary in the discharge of our statutory duties" (App. 92).

The Director decided that visitor interpretive services could best be performed by a private concessioner (App. 68), and acting pursuant to the authority contained in 16 U.S.C. §§ 1-3, 17b, 20, 20a-g, and in D. C. Code § 8-108, the Park Service issued a prospectus inviting proposals from private firms to enter into a contract to provide such services. The Director testified that:

"... the prime quality that we were looking for was an end product of the kind of service we were seeking, which is a service different from that which is now being provided. We want a service like the one we experimented with in the fall of 1966. We weren't seeking any particular company and, certainly, no preconceived notion as to what type of equipment and this kind of thing; what we were after was an end product of an interpretive service" (App. 43).

In addition to Universal, intervenors D. C. Transit, White House Tours, and Washington Sightseeing Tours, Inc. were among the seven firms who responded to the prospectus by submitting proposals. Universal was awarded the Contract by the Secretary. In commenting upon the award, the Director said: "The thing [Universal] stressed most and what impressed me most in their proposal was their interpretive qualifications" (App. 44).

Prior to entering into the formal agreement Universal was informed by the Department of the Interior that the Secretary had exclusive charge and control over the central Mall area, and that the interpretive service required by the Contract would be subject only to the requirements imposed by the United States of America.

3. The Contract Between the United States and Petitioner

Universal signed the Contract on March 24, 1967. In the Contract the Secretary authorized the concessioner Universal:

"... to establish, maintain, and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the city of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, along such routes as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules, and regulations of the Federal Government, and to use in connection therewith such Govern-

ment-owned lands and improvements as may be designated by the Secretary" (App. 71).

The Contract requires Universal to station guides at eleven designated points of national interest along the Mall. Such guides are required to wear uniforms approved by the Park Service and to be thoroughly conversant with the geography and history of the nation's capital. The stationary guides will be prepared to furnish information about the city and its facilities to all persons regardless of whether they have paid for the visitor interpretive shuttle service (App. 11).

Universal is required by the Contract to operate a mobile interpretive service utilizing trams of a design approved by the Secretary. Each tram is to be manned by a tour guide and by a driver. Each tram will bear the insignia of the National Park Service. As the tram proceeds through the Mall, the guides present a narration to the visitors. The Contract states that the interpretive function is a prime consideration thereunder (App. 75).

The exact route or routes to be followed through the Mall by the mobile visitor interpretive shuttle have not as yet been fixed by the Secretary (App. 49). However, the Director testified that the service will be carried entirely on land owned by the United States in the National Park area (App. 39). If the route finally designated should coincide substantially with the route followed during the Secretary's experiment in the Fall of 1966, the interpretive trams may cross some streets administered by the District of Columbia such as 14th Street, 7th Street and 4th Street which bisect the Mall (App. 45). It is also possible that, during temporary construction of the Inner Loop in the vicinity of the Grant Memorial, the interpretive trams may proceed

briefly along 2nd Street, which is administered by the District of Columbia (App. 46).²

It is expected that two basic types of interpretive service will be provided. First, Universal must furnish a "round trip" interpretive tour originating and terminating at the same point with no passengers embarking en route (App. 69). Second, the Contract contemplates that Universal may, with the approval of the Secretary, provide an interpretive shuttle service whereby passengers can commence the narrated tour, proceed to a given point of interest, debark, remain at that point of interest and later join another tram at that point and continue the narrated tour.

The Contract provides for close and continuous regulation by the Secretary of every phase of the activities of Universal; for example, the Secretary controls both the type and number of mobile units to be utilized, rates, routes, hours of service, schedule of trips, and content of narration. The Secretary has assigned government lands and government improvements to be utilized by Universal in connection with operations. Universal agrees to pay a fee to the United States based on Universal's gross receipts from the interpretive service. The Secretary prescribes the manner in which the accounting records of Universal shall be maintained; both the Secretary and the Comptroller General of the United States have the right to examine Universal's books. The Contract requires that Universal carry casualty and liability policies and that the United

² The Director of the National Park Service has authority to arrange for access along such streets by reason of D. C. Code § 8-135, by arranging a transfer of jurisdiction through a simple exchange of letters between the Director of the National Park Service and the Commissioners of the District of Columbia. Such arrangements are now being made (App. 46).

States of America be named as co-insured in liability policies. The United States is given a first lien on all assets of Universal utilized in the visitors' interpretive service.

4. Present Activity Through the Mall

D. C. Transit now operates some fixed route mass transit through the Mall with the specific permission of the Secretary. (Government & Deft. Ex. 1, 2, Tr. 113). D. C. Transit and other intervening sightseeing companies, as well as others similarly situated, are now operating chartered sightseeing services through the Mall at the sufferance of the Secretary (App. 42, 47). The regulations of the Park Service prohibit commercial solicitation in National Capital Parks areas (App. 48). The Director testified that the Park Service does not plan in the immediate future to interfere with existing sightseeing bus operations that go through the Mall (App. 42), and indeed the Park Service plans to increase surface parking spaces available for sightseeing buses on the central Mall after the interpretive service is in operation (App. 49. At such time as vehicular traffic eliminated from the central Mall, pursuant to the Secretary's long-range plans, the Park Service intends to provide ample underground parking for buses operated by charter sightseeing companies (App. 40, 42, 49).

5. Commencement of the Litigation

Almost immediately after the Department of the Interior announced the award of a contract to Universal, WMATC notified Universal of its contention that Universal could not lawfully operate under the Contract unless and until Universal obtained a certificate of convenience and necessity from WMATC. When Universal responded that, on the basis of the advice given

to it by the Department of the Interior, it would not apply for such a certificate, WMATC commenced this action in the District Court. During the pendency of this action, Universal has not operated under the Contract. Each of the intervening plaintiffs joined in WMATC's contention that Universal cannot lawfully operate under the Contract without obtaining a certificate of convenience and necessity from WMATC and, in addition, D. C. Transit urged that Section 3 of the Franchise Act of July 24, 1956, 70 Stat. 598, protected it from competition unless the competitor obtained a certificate from WMATC.

6. Orders and Opinion Below

In an extensive opinion dismissing the complaints, the District Court found that the interpretive service contracted for by the Secretary was to be conducted within an enclave over which the Secretary has exclusive jurisdiction and is therefore not transportation within the meaning of the WMATC Compact. Alternatively, the District Court held that even if WMATC had jurisdiction over services to be performed in the central Mall area, the services to be performed by Universal were "transportation by the Federal Government" and therefore expressly exempt from the provisions of the Compact. The District Court also found that the proposed interpretive tour service did not violate the protection accorded to D. C. Transit in its Franchise.

In reversing the District Court, the Court of Appeals did not hand down an opinion. Its order merely recited the conclusion that,

"The various relevant statutory provisions, construed in relation one to the other, especially in

view of the physical location of the Mall in the Metropolitan area of the District of Columbia, do not afford authority to the appellee Universal Interpretive Shuttle Corporation validly to engage in such transportation for hire in the Mall area as is contemplated by the [Contract] . . . without a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission authorizing such transportation. . . ." (App. 113-114).

SUMMARY OF ARGUMENT

I.

The Secretary of the Interior has exclusive jurisdiction over the National Park lands known as the Mall area in the city of Washington. D. C. Code §§ 8-108, 8-144; 16 U.S.C. §§ 1-3. The decision of the Secretary to provide a visitor interpretive service on the Mall pursuant to a contract with petitioner is clearly within the authority vested in the Secretary by Congress. 16 U.S.C. §§ 1-3, 17b, 20a-g. No provision of the interstate compact creating WMATC or the consent of Congress to the Compact purports to cede any portion of the Secretary's exclusive jurisdiction over the National Parks in the District of Columbia to WMATC. Settled rules of statutory construction and the legislative history of the Compact foreclose any argument that a cession of jurisdiction from the Secretary to WMATC can be implied from the terms of the Compact. All aspects of the service to be operated by petitioner are subject to stringent regulation by the Secretary. WMATC seeks to regulate the same aspects of petitioner's operations regulated by the Secretary under the terms of the Contract and applicable statutes. 16 U.S.C. §§ 17b, 20a-g. WMATC's attempted regula-

tion would frustrate expressed Federal policy and therefore is prohibited. *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956).

II.

The service to be provided in the Mall by petitioner pursuant to its Contract with the Secretary is not transportation within the meaning of the Compact. The Compact was enacted to effectuate joint control and regulation of mass transportation or commuter service within the Washington metropolitan area in a single body. The mobile interpretive service to be provided by Universal is not to be a part of the mass transit system of the Washington metropolitan area. It is the means by which visitors to Washington will be provided with a meaningful interpretation of the central Mall area.

Furthermore, the primary service to be offered by Universal—a service originating and terminating at the same point—does not fall within the jurisdictional requirement of the Compact that there be transportation “between any points.”

III.

Even if it be assumed that the visitor interpretive service proposed by the Secretary is “transportation” within the meaning of the Compact, the proposed service is “transportation by the Federal Government” and thus exempt from regulation by WMATC. *Yarlesley v. W. A. Ross Construction Co.*, 309 U.S. 18 (1940).

IV.

The proposed visitor interpretive service is not mass transit of passengers for hire by a bus line operating

over a given route on a fixed schedule. Therefore, the limited protection against competition accorded to D.C. Transit System in its Franchise is inapplicable in these premises.

V.

D.C. Transit System and the other intervenors who operate sightseeing tours within the Mall only at the sufferance of the Secretary have no standing to seek an injunction against the initiation of the visitor interpretive service by the Secretary.

ARGUMENT

Introduction

The District of Columbia is the Nation's Capital. This is the reason for its existence; this is the reason for its uniqueness. The great Mall in the City of Washington is the most important of the major parks in the District. It encompasses many major shrines of our national heritage, including the White House, the Ellipse, the Memorials to Washington, Lincoln and Jefferson, which are the unique and priceless possessions of all the citizens of the United States. In reaching the necessary accommodation between the interests of the local population and the interests of the Nation as a whole, Congress has traditionally vested direct plenary authority over the national parks in the District, and the Mall in particular, in the executive branch of the Federal Government. In this case, the Court of Appeals has subjected the decision of the National Government to provide a new and meaningful service on the Mall to the oversight of an agency representing parochial interests. The very existence of such a power in a local agency threatens to hobble the National Gov-

ernment's ability to plan effectively for the preservation and enhancement of the Mall. Reversal of the Court of Appeals decision is necessary in order to preserve the thoughtful accommodation that Congress has expressed between the national and local interests.

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CONGRESS HAS VESTED EXCLUSIVE JURISDICTION IN THE SECRETARY OF THE INTERIOR OVER ACTIVITIES WITHIN THE CENTRAL MALL AND THE AUTHORITY CONFERRED INCLUDES THE POWER TO CONDUCT THROUGH A PRIVATE CONCESSIONER A MOBILE INTERPRETIVE SERVICE WITHIN THE CENTRAL MALL AND TO REGULATE SUCH SERVICE WITHOUT INTERFERENCE BY ANY LOCAL REGULATORY AGENCY.

A. Congress Has Specifically Conferred "Exclusive Charge and Control" Over the Mall of the District of Columbia on the National Park Service of the Department of the Interior.

The Court of Appeals decision studiously ignores a long history of Congressional mandates which vest exclusive control over the parks of the District of Columbia in the National Government. In the Act of July 1, 1898, 30 Stat. 570 as amended, D. C. Code § 8-108, Congress specifically provided that:

"The park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States." (Emphasis supplied).³

³ In the aforementioned Act of 1898, Congress vested jurisdiction in the Chief of the Corps of Engineers of the United States Army. Such jurisdiction was transferred to the Director of Public Buildings and Public Parks of the National Capital by Act of February 26, 1925, 43 Stat. 983, and ultimately to the Director of National Park Service by Executive Order No. 6166, § 3, June 10, 1933.

This grant of authority is clear and unequivocal. This grant of exclusive charge and control was extended by the Act of March 4, 1909, 35 Stat. 994 as amended, D. C. Code § 8-144, which states:

“The application of the rules and regulations prescribed prior to March 4, 1909, or that may be thereafter prescribed by the Director of the National Park Service, under the authority granted by sections 5-204, 8-108, 8-110, 8-127, 8-135 and 8-143, for the Government and proper care of all public grounds placed by that act under the charge and control of the said Director of the National Park Service, is hereby extended to cover the sidewalks around the public grounds and the carriage-ways of such streets as lie between and separate the said public grounds.”

Still other provisions of the D. C. Code affirm the jurisdiction and define the duties of the Director of the Park Service with respect to National Parks located in the District of Columbia. See D. C. Code §§ 7-1208, 7-1209, 8-109, 8-115, 8-135, and 8-153. Thus, when the lands now comprising the West Potomac Park area, including the Tidal Basin and the Jefferson Memorial, were reclaimed and added to the Mall area, the Congress again conferred exclusive jurisdiction. The Act of August 1, 1914, 38 Stat. 634 as amended, D. C. Code § 8-154 provides that: “The Potomac Park is made a part of the park system of the District of Columbia under the *exclusive charge and control of the Director of the National Park Service . . .*” (Emphasis supplied).

Congress has repeatedly reaffirmed its mandate that the Director of the Park Service has exclusive jurisdiction within the National Parks. In passing a comprehensive traffic ordinance for the District of Columbia in 1925 Congress was again careful to preserve exclu-

sive charge and control of the Director of the National Park Service. D. C. Code § 40-613 states that: "Nothing contained in this chapter shall be construed to interfere with *the exclusive charge and control* prior to March 3, 1925, *committed to the Director of the National Park Service over the park system of the District*, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control" (Emphasis supplied).

Congress could not have been more explicit in expressing its determination that the Director of the National Park Service has exclusive jurisdiction over all activities within the Mall area.

B. The General Regulatory Authority Vested by Congress in the Secretary of the Interior Pursuant to Powers Granted Congress in the Constitution Precludes Assertion of Jurisdiction by WMATC.

National parks and monuments occupy a special place in the statutory scheme for disposition and control of lands owned by the United States. By Act of August 25, 1916, 39 Stat. 535, 16 U.S.C. § 1; Congress created in the Department of the Interior a service called the National Park Service. The Service was charged specifically with the duty of promoting and regulating the use of the Federal areas known as national parks, monuments and reservations by such means and measures to conform to the fundamental purpose of national parks and reservations, which is to conserve the natural and historical objects and to provide for the enjoyment of same by such manner and

such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. § 1.

The same Act provides that the Director of the National Park Service "shall, under the direction of the Secretary of the Interior, *have the supervision, management, and control of the several national parks and national monuments . . .*" 16 U.S.C. § 2. (Emphasis supplied). Congress also specifically granted to the Secretary the authority to exercise full regulatory control over national parks and monuments. The Act specifically provides that "The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service" 16 U.S.C. § 3. Acting pursuant to the foregoing statutory authority the Secretary of the Interior may make determinations with respect to the use and enjoyment of the national parks and national monuments which lie within the reservation known as the Mall area in the City of Washington.

Here the Secretary has determined that the number of visitors to the Mall area exceeded 12 million in 1965 and is expected to increase progressively in the coming years (App. 68). The Secretary also determined that the visitor demands require the provision of an expert interpretive service in order to promote full usage and enjoyment of the Mall area by the people of the United States (App. 68). These determinations are clearly within the power of the Secretary. 16 U.S.C. §§ 1-3. The Secretary also found that the United States has not provided the necessary facilities and services and determined that Universal as a concessioner should establish and operate the necessary facilities and services in

the Mall area at reasonable rates under the supervision and regulation of the Secretary (App. 68). Congress has clearly granted the power to the Secretary to provide necessary services and facilities in this manner. The Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. § 17b, specifically provides that "*the Secretary of the Interior is hereby authorized to contract for services or other accommodations provided in the national parks and national monuments for the public under contract with the Department of the Interior, as may be required in the administration of the National Park Service, at rates approved by him for the furnishing of such services or accommodations to the Government. . . .*" (Emphasis supplied).

In the Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. § 20, Congress re-examined the authority of the Secretary of the Interior to administer National Park System areas. It specifically found that the "preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use. . . . It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas." 16 U.S.C. § 20.

In the same Act, Congress specifically authorized the Secretary to make contracts such as the one in issue here. "Subject to the findings and policy stated in section 20 of this title, the Secretary of the Interior shall take such action as may be appropriate to encourage

and enable private persons and corporations (hereinafter referred to as 'concessioners') to provide and operate facilities and services which he deems desirable for the accomodation of visitors in areas administered by the National Park Service." 16 U.S.C. § 20a. The 1965 Act then provides specific standards for awarding of contracts by the Secretary to concessioners and regulation of the activities of concessioners. 16 U.S.C. § 20b-g.

The statutory plan enacted by Congress to delegate exclusive jurisdiction over the use and enjoyment of national parks is clearly within the power of Congress. Article IV, § 3, clause 2 of the Constitution authorizes Congress to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ." In *Dow v. Ickes*, 123 F. 2d 909, 914 (D. C. Cir. 1941); *cert. denied* 315 U. S. 807 (1942), the Court of Appeals construed a grant of power to the Secretary and in upholding the Secretary's power stated that "broader discretion hardly could have been conferred." The Court further noted that it could not interfere with the Secretary's exercise of his broad powers and discretion. *Ibid.* This power includes the power to construct roads and facilities and to determine the manner in which they shall be used and who shall use them. *United States v. Gray Line Water Tours of Charleston*, 311 F. 2d 779, 781 (4th Cir. 1962); *Robbins v. United States*, 284 Fed. 39 (8th Cir. 1922); *King v. Edward Hines Lumber Co.*, 68 F. Supp. 1019, 1022 (D. Ore. 1946). *Cf.*, *Dow v. Ickes*, 123 F. 2d 909 (D.C. Cir. 1941).

The services required in the Contract between the United States and petitioner will be carried out on land

owned by the United States and exclusively controlled by the United States. It is noted in *United States v. Fraser*, 156 F. Supp. 144 (D. Mont. 1957), aff'd 261 F. 2d 282 (9th Cir. 1958),

"It is well settled (1) that the United States can prohibit absolutely or fix terms on which its property may be used; (2) that Congress has the exclusive right to control and dispose of the public lands of the United States; and (3) that when that right has been exercised with reference to lands within the borders of a State, neither the state nor any of its agencies has any power to interfere....

"The power of Congress to control public lands may be exercised through vesting in the Secretary of the Interior the right to make rules and regulations necessary to effectuate the legislative policy. Regulations of the type here under consideration have long been held a valid exercise of delegated power." 156 F. Supp. at 147-148.

The specific activities required by the Contract between the United States and Universal will take place within the central Mall area of the city of Washington. Congress has specifically stated that the Director of the National Park Service of the Department of the Interior shall have "exclusive charge and control" of this area "under such regulations as may be prescribed by the President of the United States." D. C. Code § 8-108. Congress also has specifically authorized the Director of the National Park Service to regulate sidewalks and streets lying between and separating park areas on the Mall. D. C. Code § 8-144. This is a specific grant of authority to the Director of the National Park Service to regulate streets which bisect park lands but are otherwise under the jurisdiction of the District of Columbia. In addition, Congress has

enacted a comprehensive grant of regulatory authority to the Secretary which governs the very matters sought to be regulated by WMATC. 16 U.S.C. §§ 1-3, 17b, 20. In these premises the principles enunciated in *Fraser* apply, and WMATC has no authority to inject itself into the regulatory program vested by Congress in the Secretary.

C. Congress, in Consenting to the Interstate Compact Creating WMATC, Did Not Limit or Impair the Exclusive Jurisdiction of the Secretary Over the Mall.

WMATC was created by an interstate compact between the States of Maryland and Virginia and the District of Columbia. The essential purpose of the Compact was to centralize regulation of mass transportation in the Washington metropolitan area that had previously been fragmented among the Public Utilities Commission of the District of Columbia (PUC), Public Service Commission of Maryland, the Corporation Commission of Virginia and the Interstate Commerce Commission (ICC). Prior to the Compact, none of these agencies had jurisdiction within the park areas of the District of Columbia. Indeed, Congress has expressly prohibited both the District of Columbia PUC and the ICC from exercising regulatory authority within park lands of the District. The District of Columbia Traffic Act of 1925, 43 Stat. 1119, as amended by the Act, February 27, 1931, 46 Stat. 1424, by which the PUC was granted regulatory powers over routing and scheduling in the District of Columbia specifically provides:

“Nothing contained in this Act shall be construed to interfere with the exclusive charge and control heretofore committed to the Chief of Engineers over the park system of the District. . . .”

The Interstate Commerce Commission Act, Act of August 9, 1935, 49 Stat. 544, as amended, 49 U.S.C. § 309(a) specifically provides:

“That nothing in this chapter shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior. . . .”

In addition, 49 U.S.C. § 303(b)(4) also exempts from ICC regulation “motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments. . . .”

These specific exemptions when read together with the provisions of D. C. Code §§ 8-108 and 8-144 which vested sole charge and control over the park areas within the District of Columbia in the Secretary conclusively demonstrate that prior to the Compact the Secretary's jurisdiction over transportation in the park areas of the District of Columbia was exclusive and impregnable.

Respondents have contended in the courts below that the PUC regulated bus lines and taxis which utilize park roads or streets bisecting parks in the course of their operations in the District of Columbia, and, therefore, that a service being provided entirely within the central Mall area for the Secretary is subject to regulation by the successor to PUC's regulatory authority, WMATC. This contention, however, ignores the vital fact that such regulation of buses and taxis has always been incidental oversight of certified or licensed carriers whose principal operations were subject to the regulatory authority of PUC and the successor to its regulatory authority, WMATC. The situation is

entirely different with respect to an enterprise seeking to conduct an activity entirely within park land under specific regulation by the Secretary because there is no portion of the operation outside of park lands subject to regulation by the WMATC to provide WMATC with a geographical basis for its assertion of jurisdiction which was present in the situations cited by it.

Moreover, bus lines and taxis whose routes and operations extend to all areas of the District under the authorization and regulation of WMATC and PUC are not likely to present and have not presented a jurisdictional challenge to regulation of their activity on park land by WMATC or PUC for the practical reason that all of their operations outside of park lands are, in any event, subject to regulation by these bodies. The mere fact that the Secretary has acquiesced in such incidental acts by PUC and WMATC in no way infringes upon the Secretary's exclusive jurisdiction over the parks of the District of Columbia. Acquiescence does not mean abdication, and when the United States chooses to limit or terminate its acquiescence it may do so.⁴ See *United States v. Unzeuta*, 281 U.S. 138, 144 (1930); *Peterseñ v. United States*, 191 F. 2d 154 (9th Cir. 1951). Cf. *Paul v. United States*, 371 U.S. 245 (1963). One who possesses exclusive power to regulate may choose to use it alone, or may choose, in the exercise of that regulatory power, to permit others to regulate by sufferance. The Secretary may later oust those who so act by sufferance from his jurisdictional enclave. Here, the Secretary has de-

⁴ Cases in which the federal preemption doctrine is applied offer examples of how the Federal Government does not abdicate its regulatory powers by acquiescing in regulation by other bodies. Whenever it chooses to do so, the Federal Government may simply terminate the local regulatory scheme. See, e.g., *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947); *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148 (1942).

terminated that to fulfill his statutory duties he alone must regulate his concessioner's unique activities within the Central Mall. To this end, the Secretary has provided for detailed regulation of Universal's day-to-day activities.

In statute after statute, Congress has repeatedly emphasized its determination to vest exclusive control over the Mall in the Secretary. It is a fundamental principle of statutory construction that a legislature by enacting a statute does not intend to alter existing law beyond what it explicitly declares either expressly or by necessary implication. *Rath v. Eagle-Picher Co.*, 225 F. 2d 572 (10th Cir. 1955). There is also a presumption against interpretation of powers that infringe upon those of coordinate departments of government. *United States v. Klein*, 13 Wall. 128, 146-147 (1872). In this case there clearly is no necessary, or even reasonable, implication that Congress in consenting to the WMATC Compact intended to suspend the laws vesting exclusive jurisdiction over national parks in the Secretary.

Congress, in consenting to the Compact, did not confer any new, affirmative regulatory powers upon WMATC over park lands. Neither the Compact nor the enabling legislation contain any express provision granting such power. Indeed, with the notable exception of regulation of rates of interstate taxicabs (which exception is reflected by an express provision in the Compact), the Congress did not confer any powers upon WMATC not possessed by its predecessors. The legislative history demonstrates that Congress carefully limited the grant of power in the Compact to pre-existing power over transportation:

"House Debate

Rep. Lindsay: House Joint Resolution 402 deals with an important aspect of that problem, namely,

the centralization in a single agency of government of the regulatory jurisdiction over the several privately owned and operated transit companies presently serving the metropolitan area, which is now diffused among four separate States and Federal commissions.' 106 Cong. Rec. 11736 (1960).

* * * *

House Hearings

Charles R. Fenwick, Virginia State Senator: 'Actually the intent of this [the Compact] was simply to substitute the powers that are now enjoyed by four different agencies and put them into one.'

Rep. Tuck: '* * * The whole idea of this proposed compact is not to take away any powers from anybody?'

Fenwick: 'That is correct.'

Tuck: 'Not to confer upon the new regulatory body any powers not already now existing in other regulatory bodies? The purpose is simply to converge or consolidate them all into one body so there will be one responsible body to control and regulate the entire transportation system, with some exceptions, within the metropolitan area?'

Fenwick: 'That is correct; with no intent for this to affect labor in any way, or to create any new rights.'

Hearings on H.J.R. 402 Before a Subcomm. of the House Comm. on Jud., 86th Cong., 2d Sess., Pt. 1, p. 104-05 (1960) (hereinafter cited as Hearings).

Edward S. Northrop, Maryland State Senate: '* * * What this interstate commission will do is to merely to replace these four bodies, and nothing more.'

'They have no more powers than the bodies had, than the Public Service Commission of Maryland

or the Public Utilities Commission of the District of Columbia or the Corporation Commission of Virginia or the ICC in this particular area.'

Hearings, Pt. 1, p. 118.

Jerome M. Alper, attorney: 'In net effect, the compact centralizes to a great degree in a single agency, the Compact Transit Commission, the regulatory powers over private transit now shared by four regulatory agencies.'

Hearings, Pt. 2, p. 248.

W. E. Fahey, Director of the National Capital Planning Commission, in a letter to Congress recommending that the Compact be enacted wrote:

"The compact also fully details the extent of the regulatory authority of the Commission. It specifies the conditions under which the compact shall come into being and appropriately relates the functions of the Commission created by the compact to those presently exercised by the Public Utilities Commission of the District of Columbia, the Interstate Commerce Commission, the Public Utilities Commission of Maryland, and the State Corporation Commission of Virginia." H.R. Rep. No. 1621, 86th Cong. 2d Sess. 36 (1960) (hereinafter cited as H. Rep. No. 1621).

Giving due weight to settled principles of statutory construction and to the relevant legislative history, no cession of the Secretary's authority over park lands established in a host of Congressional enactments can be inferred from the consent of Congress to Article XII of the Compact which grants authority to regulate "transportation for hire between any points in the Metropolitan District. . . ." D. C. Code § 1-1410.

Nor did the suspension of laws provision in the Compact and the consent legislation make any inroads into

the exclusive jurisdiction of the Secretary over national parks in the District.

Article VIII of the Compact provides that the Compact becomes effective upon enactment by Congress of legislation suspending:

"the applicability of the Interstate Commerce Act, the laws of the District of Columbia, and any other laws of the United States, to the persons, companies and activities which are subject to this Act, to the extent that such laws are inconsistent with, or in duplication of, the jurisdiction of the Commission or any provision of this Act. . . ." D. C. Code § 1-1410.

Article XII, § 20(a), also provides for suspension of the laws of the signatories to the Compact relating to transportation.

"Upon the date this Act becomes effective, the applicability of all laws of the signatories, relating to or affecting transportation subject to this Act and to persons engaged therein, and all rules, regulations and orders promulgated or issued thereunder, shall except to the extent in this Act specified, be suspended. . . ." *Ibid.*

To implement the above provisions of the Compact, Congress enacted a statute suspending the applicability of:

"the laws of the United States, and the rules, regulations, and orders promulgated thereunder, relating to or affecting transportation under the compact and to the persons engaged therein, including those provisions of section 40-603(e), relating to the powers of the Public Service Commission of the District of Columbia and the Joint Board created under such section. . . ." D. C. Code § 1-1412.

The purpose of the suspension of laws provision was to remove from the PUC and the ICC those regulatory powers which they possessed which were inconsistent with or duplicative of the provisions of the Compact.

In approving the Compact, Congress was very aware of the laws to be suspended and the Joint Congressional Committee considering the Compact set out in chart form the existing federal laws that were to be suspended in whole or in part by the Compact. H. Rep. No. 1621, pp. 29-30.⁵ The statutes listed therein include parts of 49 U.S. Code and parts of Titles 40, 43, and 44 of the D. C. Code. *Ibid.* Totally absent from this chart is reference to any suspension or limitation of those statutes providing that the District of Columbia park areas are within the exclusive jurisdiction of the Secretary of the Interior. Thus, the contention that the enactment of the Compact impaired or limited the exclusive jurisdiction of the Director of the National Park Service over park areas within the District of Columbia must be rejected.

The suspension of laws provision did not create any new power in WMATC, it merely effected the transfer to WMATC of the regulatory powers then exercised by the ICC and the PUC. As was noted previously, neither the ICC nor the PUC had jurisdiction over national parks and, therefore, the body succeeding to their power, WMATC, can have no such jurisdiction unless such jurisdiction has been expressly conferred upon it. WMATC, however, has argued that the suspension of laws not only effected the transfer to it of the regulatory power of the PUC and the ICC but also suspended the exemptions in the ICC Act, 49 U.S.C. §§ 309(a); 303(b)(4). Again WMATC ignores

⁵ The chart is set forth in Appendix B of this brief.

the legislative history of the Compact wherein, in considering the laws to be suspended, Congress sets forth:

"a listing of the Federal laws which are suspended in whole or in part to the extent that such laws are inconsistent with or in duplication of the provisions of the Compact..." (Emphasis supplied)
H. Rep. No. 1621, p. 29.

It is significant that it is only the provisions of the ICC and PUC Acts which conferred upon these bodies the power to regulate passenger transportation for hire that are inconsistent with or duplicative of the Compact. No other provisions of these Acts therefore are suspended. The exemption provisions of 49 U.S.C. §§ 309(a), 303(b), are neither "inconsistent with or duplicative of" any provisions of the Compact. Consequently, these exemption provisions were not affected in any manner by the suspension of laws provision.

In the court below respondents argued that an intent to limit the Secretary's power can be inferred from Congressional silence regarding an explanatory amendment offered by the Secretary to a proviso of the suspension of laws section of the Congressional consent to the Compact. The proviso as enacted reads:

"That nothing in this subchapter or in the compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities. . . ." D. C. Code § 1-1412 (Emphasis supplied).

When the Compact was being considered by Congress the Secretary recommended its adoption but suggested

some technical amendments. One of these amendments was directed at deleting "Director of the National Park Service" from the above-quoted proviso and adding a specific proviso relating to the Park Service. The Secretary offered such an amendment because he believed that "police powers" was not a term descriptive of the authority and responsibilities of the Director of the Park Service. H. Rep. No. 1621, p. 49. He suggested the following proviso:

"That nothing in this Act or in the compact shall affect the authority and responsibility of the Secretary of the Interior pursuant to section 3 of the Act of August 25, 1916 (39 Stat. 535), as amended, and other Acts of Congress controlling the development and use of national parks, monuments, and reservations comprising the National Park System." *Ibid.*

This amendment was not adopted by Congress and no reference to it was made in any of the hearings, committee reports or Congressional debates.

Reliance by respondents on Congressional silence regarding the Secretary's amendment is entirely misplaced because silence is at least equally consistent with the conclusion that Congress believed the amendment was unnecessary. *United States v. United Mine Workers*, 330 U.S. 258, 277 (1947). Moreover, the latter supposition is even more probable in this case because Congress, in consenting to the Compact and supporting statute, specifically focused on those laws it intended to suspend or abrogate and the power and jurisdiction of the National Park Service was not included therein. Under these circumstances, it would be unreasonable and irrational to construe the silent refusal to adopt an amendment specifically preserving

the powers and jurisdiction of the Director as an adoption of a law severely circumscribing his exclusive jurisdiction over the Mall area. *United States v. California*, 332 U.S. 19 (1947).

Furthermore, there is no reason why the term "police powers" should not be interpreted as including the full scope of the preexisting authority delegated by Congress to an executive agency to make rules and regulations relating to property of the United States at least insofar as such authority relates to the operation of vehicles. As the court said in *Tennessee v. United States*, 256 F. 2d 244, 258 (6th Cir. 1958):

"Since Congress has the power to 'make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States' (Constitution, art. 4, § 3, cl. 2), this power of the United States, analogous to the police power of a state, is clearly applicable where the lands of the United States are concerned."

See also *Robbins v. United States*, 284 Fed. 39, 45 (8th Cir. 1922). Since the Secretary had the authority, prior to the enactment of the Compact, to authorize without the approval of the PUC or the IOC, a service involving vehicles of the type provided for under the Contract, the police power reservation in the Compact has expressly preserved that authority.

D. WMATC's Claim of Jurisdiction Over the Mall Area Would Create Irreconcilable Conflicts With the Regulatory Scheme Approved by Congress in the Act of October 3, 1985.

Congress assented to the Compact which created WMATC in 1960 and assented to amendments in 1962. Thereafter, Congress again had occasion to re-examine the authority of the Secretary to regulate concessioners in national parks such as the Mall. Congress specifi-

cally reaffirmed the pre-existing jurisdiction, policies and regulatory activities of the Secretary.

In the Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. § 20, Congress enacted a comprehensive regulatory scheme concerning concessions for accommodations, facilities and services in areas administered by the National Park Service. Section 20 is a statement of Congressional findings and a statement of purpose. Section 20a specifically grants authority to the Secretary of the Interior to establish policies and to contract with concessioners to provide and operate facilities which he deems desirable in areas administered by the National Park Service. Section 20b contains specific provisions with respect to the protection of concessioners' investments, return of capital, determination of reasonableness of concessioners' rates and source and determination of franchise fees. Section 20c governs the grant of preferential rights such as the one granted to Universal in its contract with the Secretary. Section 20d makes provisions for renewals. Section 20g provides for the authority of the Secretary to prescribe the manner in which to keep records and also prescribes periodic audit of such books and records by the Secretary and by the Comptroller General of the United States.

In the exercise of this authority the Secretary has provided for a comprehensive program of regulations in the contract with Universal for the regulation of the activities of Universal. This program of regulations includes, among other things, the type and number of mobile units to be utilized, rates, routes, hours of service, scheduled trips, accounting systems, insurance and bonds (App. 72-87). These are the very matters which WMATC would purport to regulate if the Secretary and Universal would accede to its juris-

diction. Compare Compact, Article XII, §§ 4-7, 9 and 10. WMATC's attempt to foist its jurisdiction on the Secretary would, if sanctioned by the Court, create an intolerable conflict with federal policy and the federal regulatory scheme vested in the Secretary by the Act of October 9, 1965, 79 Stat. 969-971, 16 U.S.C. § 20a-g.

WMATC is essentially a creature of two States and a municipal corporation. Congress, by giving its consent to the Compact pursuant to Article I, § 10, Clause 3 of the United States Constitution, is performing a duty required of it in order to protect against infringement of the federal government's jurisdiction. *Virginia v. Tennessee*, 148 U.S. 503 (1893). Such Congressional consent, however, essentially is an approval of the terms agreed to by the participant states rather than affirmative legislation. *Henderson v. Delaware River Joint Toll Bridge Commission*, 66 A. 2d 843 (Pa. 1949); *People v. Central R. R.*, 79 U.S. 455 (1872).

The instant Compact deals with mass transit in the metropolitan area of Washington, a matter of great concern to the 2,500,000 inhabitants of the District of Columbia and suburban Maryland and Virginia. On the other hand, the Mall is a shrine for the Nation's 200,000,000 people. Congress has committed the responsibility for all aspects of its care and utilization to an official of the National government, the Secretary of the Interior. If a conflict between local interest and National interest should arise in this context the National interest must prevail.

The courts have held in a variety of contexts that local regulatory schemes cannot be applied to activities of a private contractor performed pursuant to a contract with the United States awarded in conformity

with federal law. Thus, in *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956), a contractor received an award for the construction of federal facilities in the State of Arkansas. The contractor began work and subsequently was convicted for working as a contractor within that State without a license as required by State law. The Supreme Court reversed the conviction, *per curiam*, reasoning that to subject the contractor to Arkansas licensing requirements would frustrate the federal policy, expressed in the Armed Services Procurement Act, for awarding bids for federal projects to the lowest responsible bidder. The Supreme Court said:

"Mere enumeration of the similar grounds for licensing under the state statute and for finding 'responsibility' under the federal statute and regulations is sufficient to indicate conflict between this license requirement which Arkansas places on a federal contractor and the action which Congress and the Department of Defense have taken to insure the reliability of persons and companies contracting with the Federal Government. Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder." 352 U.S. 187, at 189-190. Accord: *United States v. City of Chester*, 144 F. 2d 415 (3d Cir. 1944). (See *James v. Dravo Contracting Co.*, 302 U.S. 134 (1937).)

In the case at bar, Congress has established a comprehensive federal policy for the use and enjoyment of the national parks and national monuments. 16 U.S.C. § 1. Congress has vested full authority for execution of that authority in the Secretary. 16 U.S.C. § 1-3;

D. C. Code § 8-108. Congress has enacted a detailed procedure for the award of contracts to provide services and facilities in the national parks. 16 U.S.C. §§ 17b, 20a-g. The Secretary has followed that procedure in this instance. The Contract awarded to Universal provides a detailed scheme of regulation of the operations and activities by the Secretary (App. 72-87). The regulatory scheme established by the Secretary covers essentially the same matters sought to be regulated by WMATC. Cf., Compact, Title II, Article XII, §§ 4-7, 9, 10. Thus, to permit WMATC to assert jurisdiction would create an irreconcilable conflict with regulatory power specifically vested in the Secretary by Congress.

II.

THE SERVICE TO BE PROVIDED BY PETITIONER TO THE UNITED STATES WITHIN A NATIONAL PARK ENCLAVE AS AN INCIDENT OF THE EDUCATIONAL CAMPAIGN OF THE SECRETARY IS NOT "TRANSPORTATION FOR HIRE BETWEEN POINTS" WITHIN THE MEANING OF THE COMPACT.

There is no dispute that trams will be utilized as an incident of the proposed visitor interpretive service. The disputed issue is whether the proposed service is transportation within the meaning of the Compact. The District Court correctly held that the proposed service is not "transportation" as that term is used in the Compact.

A. The Compact Is Concerned With Mass Transit, a Concept Which Differs Radically From the Concept of the Secretary's Interpretive Service.

The Compact is entitled "Compact For Mass Transportation" in the Act of September 15, 1960, 74 Stat. 1031, D. C. Code § 1-1410, and it was enacted to effectuate joint control and regulation of mass trans-

portation, or commuter service, within the Washington metropolitan area in a single body. The unique services Universal has agreed to provide visitors under the Contract, with the Secretary are not commuter or mass transportation services. An examination of the reasons for the Compact indicates that it was not contemplated that services of the type to be provided by Universal would be subject to the Compact.

Prior to enactment of the Compact there was great concern by Virginia, Maryland and District of Columbia officials regarding the adequacy of commuter service and mass transit in the Washington metropolitan area. In early 1954 a joint commission of representatives from Maryland, Virginia and the District of Columbia was established to consider:

“(1) the adequacy of present passenger carrier services in the Washington Metropolitan area, and (2) whether joint action . . . is necessary or desirable in connection with the regulation of passenger carrier facilities operation in such area.”
H. Rep. No. 1621, p. 4.

In 1955, the 84th Congress appropriated funds to enable the National Capital Planning Commission and the National Capital Regional Planning Council:

“to jointly conduct a survey of the present and future mass transportation needs of the National Capital region. . . .” *Ibid.*

These studies revealed many problems in commuter service in the Washington metropolitan area and adoption of an interstate compact was recommended to alleviate these mass transit problems.

The joint commission negotiated an interstate compact which was adopted by Virginia in 1958 and by

Maryland in 1959. In 1960 Congress authorized negotiation of the Compact by the District of Columbia. Act of July 14, 1960, 74 Stat. 544, D. C. Code § 1-1408. Shortly thereafter Congress gave its consent to the Compact and also authorized the District of Columbia Commissioners to enter into the Compact. Act of September 15, 1960, 74 Stat. 1031, 1050, D. C. Code §§ 1-1410, 1411.

Clearly the purpose of the Compact was to resolve the many commuter and mass transit problems confronting the Washington metropolitan area. This purpose is emphasized by the Preamble to the Compact which states:

"Whereas the regulation of *mass transit service* in the metropolitan area of Washington, District of Columbia, is divided among the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission; and

"Whereas such divided regulatory responsibility is not conducive to the *development of an adequate system of mass transit for the entire metropolitan area*, which is in fact a single integrated, urban community" (Emphasis supplied).

Thus, the Compact purports to deal with the problems of mass transit or commuter service in the Washington metropolitan area. This concern with commuter service and mass transportation is an entirely proper and legitimate concern of the parties to the Compact. The service to be provided by Universal under its Contract with the Secretary, however, is not a commuter service (App. 38, 41-42, 44, 75).

Thus, when the services Universal has agreed to provide are compared with the reasons for the Compact,

it is apparent that the word "transportation" as used in the Compact is not descriptive of Universal's services and not applicable thereto. The mobile interpretive service is not to be a commuter service; it is not to be a part of the mass transit system of the Washington metropolitan area. Rather, it is to be the means by which visitors to Washington will be provided with a meaningful interpretation of the National shrines in the Mall area. (App. 108).

B. The Service to be Provided by Petitioner Is Not Transportation for Hire Between Points.

Article XII, Section 1(a) of the Compact only applies to "transportation for hire by any carrier of persons *between any points*" (Emphasis supplied). Section 2(a) of the Contract contemplates a

"visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary" (Emphasis supplied).

Thus, the primary service to be offered by Universal does not fall within the jurisdictional requirement of the Compact, namely, that there be transportation "between any points." This very significant fact was apparently overlooked by the Court of Appeals which stated that Universal does not have authority "to engage in such transportation for hire in the Mall area as is contemplated by the contract" without obtaining a permit from WMATC.

III.

EVEN IF THE SERVICE TO BE PERFORMED BY PETITIONER FOR THE UNITED STATES IS "TRANSPORTATION" WITHIN THE MEANING OF THE COMPACT, SUCH "TRANSPORTATION" IS "TRANSPORTATION BY THE FEDERAL GOVERNMENT" AND THEREFORE EXEMPTED BY THE COMPACT FROM REGULATION BY WMATC.

Section 1(a)(2), Article XII of the Compact specifically excepts from the jurisdiction of WMATC "transportation by the Federal Government." WMATC has conceded that if the service being challenged were provided by vehicles operated by the Park Service, as it was in 1966 on a temporary basis, the operation would be exempt under the aforementioned section of the Compact; but WMATC contends that what the Government can do directly, it cannot do indirectly through its own concessioner. This contention is clearly erroneous.

Here, the Secretary has contracted with Universal for services to be performed on Federal land in the National Park System within his jurisdiction. 16 U.S.C. §§ 1-3, 20; D. C. Code § 8-108. Under the Contract Universal's day-to-day activities will be so intertwined with those of the Park Service as to be virtually indistinguishable; indeed, the trams will bear a Park Service emblem, Universal personnel will wear uniforms approved by the Park Service, and the United States will share directly in Universal's gross revenues from the service. In every meaningful sense, any interference by WMATC with Universal's activities under the Contract would constitute a direct interference with the Federal Government in the discharge of its management responsibilities over the National Parks. The contracting procedure utilized and the regulatory

scheme established in the provisions of the Contract were specifically authorized by Congress. 16 U.S.C. §§ 17b, 20a-g. When such conditions and circumstances are present ". . . the action of the agent is 'the act of the government'." *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18, 22 (1940).

In *Yearsley*, plaintiff, a farmer, sued defendant, a government contractor for damages on the ground that defendant in the course of building dikes on the Missouri River had produced artificial erosion and had washed away a portion of plaintiff's land. Plaintiff had judgment in the District Court. The Court of Appeals reversed on the merits. The Supreme Court affirmed the judgment of the Court of Appeals, but relied upon a different rationale. The Supreme Court held that since the act of the contractor was an act of the United States the sole remedy of the plaintiff was an action against the United States in the Court of Claims. The Supreme Court held:

"... The Court of Appeals also found it to be undisputed that the work which the contractor had done in the river bed was all authorized and directed by the Government of the United States for the purpose of improving the navigation of this navigable river. It was also conceded that the work thus authorized and directed by the governmental officers was performed pursuant to the Act of Congress of January 21, 1927, 44 Stat. at L. 1010, 1013, chap. 47.

"In that view, it is clear that if this authority to carry out the project was validly conferred, that is, if what was done was within the constitutional power of Congress, there is no liability on the part of the contractor for executing its will."

309 U.S. at 20-21.

Here there can be no doubt that the service to be performed by Universal is authorized and directed by the Secretary pursuant to Acts of Congress, 16 U.S.C. §§ 1-3, 17b, 20; D. C. Code § 8-108, which are within the Constitutional power of Congress to enact. U.S. Constitution Article IV, § 3, cl. 2. *Dow v. Ickes*, 123 F. 2d 909, 913-914 (D. C. Cir.), *cert. denied* 315 U.S. 807 (1941). *United States v. Gray Line Water Tours of Charleston*, 311 F. 2d 779, 781 (4th Cir. 1962). Under these circumstances, the service to be provided by Universal is an activity of the Federal government and, accordingly, exempt from WMATC's jurisdiction by reason of Section 1(a)(2), Article XII of the Compact.

IV.

THE SERVICES TO BE PERFORMED BY PETITIONER DO NOT VIOLATE ANY PROTECTION GRANTED TO D. C. TRANSIT SYSTEM IN ITS FRANCHISE.

At each stage of this proceeding D. C. Transit has contended that the proposed interpretive service would violate the protection against competition provided in Section 3 of its Franchise, Act of July 24, 1956, 70 Stat. 598. The District Court rejected this contention, stating that

"... it appears to the court that D. C. Transit is overreaching when it claims Section 3 protection against this shuttle service. In our opinion, what Congress intended to give the D. C. Transit was protection in the operation of its day to day activities in the mass movement of the public of Washington, D. C. over the D. C. streets. What the Secretary is proposing to do is in no wise competitive with that fundamental function of the D. C. Transit System.

"Apparently the D. C. Transit does operate some fixed routes from time to time through the

Mall area for which it seeks specific permission from the Secretary of the Interior, thus recognizing his absolute control over operations within that area. Those are bus commuter services rather than sightseeing services and would hardly be deemed competitive with the shuttle service as envisioned by the contract with Universal." (App. 111).

Since the Court of Appeals held that Universal's service under the Contract is subject to the certification requirements of WMATC, it did not pass upon this issue raised by D. C. Transit.

In order fully to understand D. C. Transit's Franchise it is important to know the reasons for its enactment. In the summer of 1956 a protracted strike against Capital Transit Company caused severe hardship and inconvenience to local commuters and created chaotic traffic conditions. After due inquiry Congress revoked the franchise of Capital Transit Company and granted to D. C. Transit ". . . a franchise to operate a *mass transportation system of passengers for hire . . .*" 70 Stat. 598 § 1(a) (Emphasis supplied).

Section 3 of the Franchise provides that "no competitive . . . bus line . . . for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established . . . without the prior issuance of a certificate by [WMATC] to the effect that the competitive line is necessary for the convenience of the public." 70 Stat. 598 § 3.

Section 6 of the Franchise authorizes D. C. Transit "to engage in special charter or sightseeing services" subject to compliance with the applicable laws of the

District of Columbia and the States in which such operations take place and the Interstate Commerce Act. 70 Stat. 598 § 6.

D. C. Transit has contended (1) that the proposed mobile interpretive service (and indeed its own sight-seeing activities) is mass transportation within the meaning of Section 1(a) of its Franchise; (2) that the protection afforded by Section 3 of its Franchise extends not only to Section 1(a) activities but also encompasses Section 6 activities; and (3) that the proposed interpretive service is a *competitive bus line* for the transportation of passengers for hire which runs over a *given route* on a *fixed schedule* within the meaning of Section 3, and that therefore the interpretive service proposed by the Secretary violates Section 3 of its Franchise. The facts of this case and the settled rules of statutory construction demonstrate the fallacy of each of these contentions.

First, as the District Court found, the interpretive service proposed by the Secretary clearly is not "mass transportation" within the meaning of D. C. Transit's Franchise (App. 111). The interpretive service is a unique means of interpreting the memorials within the Mall to visitors (App. 48), and will operate wholly within the Central Mall area. It is difficult to even conceive of a commuter accustomed to using D. C. Transit's regular route services who would choose instead to use a tram featuring live narration of national memorials proceeding around the Mall at a speed of "not more than 10 miles per hour" as transportation (Government & Deft's Ex. 3, p. 4, Tr. 67).

Second, assuming, *arguendo*, that the interpretive service to be provided by Universal is not unique,

nevertheless it can be equated only with D. C. Transit's existing sightseeing service which is not protected under Section 3 of its Franchise. The District Court concluded that the specific authorization of sightseeing service in Section 6 of the Franchise makes it abundantly clear that Congress did not intend to include sightseeing services within the limited protection against competition provided in Section 3 of D. C. Transit's "franchise to operate a mass transportation system of passengers for hire." If Congress had regarded the Section 1(a) grant of authority as including permission to operate sightseeing services, it certainly would not have been necessary for it to add Section 6 to the Franchise. D. C. Transit's contention requires the Court to assume that the grant of sightseeing authority in Section 6 is merely a redundant provision. Such an assumption would offend both the dictates of common sense and the rules of statutory construction, for it is well established that:

"[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *In the Matter of the Public National Bank of New York* 278 U.S. 101, 104 (1928). See *Abbott v. Bralove*, 176 F. 2d 64 (D. C. Cir. 1949).

Thus, the existence of Section 6 compels the conclusion that Congress did not regard the term "mass transportation system" as including sightseeing services which may be similar to the service which the Secretary has proposed. And since the protective provisions of Section 3 apply only to services operated under authority of Section 1(a) of the Franchise, D. C. Transit cannot invoke Section 3 to prohibit the interpretive service proposed by the Secretary.

Finally, Section 3 of the Franchise affords no protection to D. C. Transit from the proposed interpretive service because the service is not a *competitive bus line* "which runs over a *given route* on a *fixed schedule*." 70 Stat. 598 § 3. (Emphasis supplied).

The District Court after considering the testimony found as a fact that the service proposed by the United States is "... in no wise competitive ..." with D. C. Transit's commuter service, and therefore is not within the protection against competition provided for in D. C. Transit's Franchise. (App. 111).

In addition, the settled administrative practice of WMATC demonstrates that sightseeing services have never been considered to be over a "given route" on a "fixed schedule" by WMATC or any of the intervenors prior to this action. These terms are descriptive only of the regular commuter services provided by D. C. Transit. The certificates held by all sightseeing operators, including D. C. Transit, designate such operations as "Irregular Routes" and "Special Operations." (See attachments to WMATC Ex. 3, especially D. C. Transit Certificate No. 5, p. 12, Tr. 12.) Counsel for intervenor Washington Sightseeing Tours, Inc., conceded that sightseeing operations are distinguishable from the regular route operations of D. C. Transit in that they do not run "over a given route on a fixed schedule." (Washington Sightseeing Tours Ex. 1, pp. 31-36, Tr. 15.) Yet all of the sightseeing services operate according to prearranged schedules, depart from fixed points and follow routes which are described in detail in their printed brochures (Washington Sightseeing Tours Ex. 2, 3, Tr. 15). Thus, D. C. Transit's contention that the proposed interpretive service operates over a "given route" on a "fixed schedule" within the

meaning of Section 3 of its Franchise flatly contradicts WMATC's settled practices and the sightseeing industry's long-established official position.

Moreover, under its Contract with the Secretary, Universal has no control over either the route or the schedule of the interpretive service. The Contract specifically provides:

"The Secretary authorizes the Concessioner . . . to operate a Visitor Interpretive Shuttle Service . . . along such routes as may be approved by the Secretary. . . ." (App. 70-71). (Emphasis supplied).

The Contract further provides:

"(b) Schedule of Trips. Because the Secretary has a continuing responsibility in regard to the Mall area, and pedestrian and vehicular traffic thereon, the hours of operation and number of trips per hour shall be subject to regulation and approval of the Secretary." (App. 75). (Emphasis supplied).

Thus, the Secretary has complete discretion to change at any time both the route and the schedule.*

* In support of its contention that Universal's proposed services come within the ambit of "fixed schedule" as that term appears in Section 3 of the Franchise, D. C. Transit has relied upon a portion of Section 6(a)(2) of the Contract. Section 6(a)(2) reads in full as follows:

"Sufficient equipment shall be furnished to operate three trips per hour within four months after the effective date of this contract, and sufficient additional equipment to operate a minimum of twelve (12) trips per hour, within one year from such date. Such additional equipment as may be necessary to meet the increasing needs of visitors, as determined by the Secretary, shall be furnished." (App. 75).

This provision deals with minimum equipment requirements, not schedules.

The District Court aptly observed that:

" . . . It is difficult to characterize the proposed operations of the shuttle service as proceeding over 'a given route' on a 'fixed schedule' when it is apparent from the contract with the defendant Universal that the Secretary has not designated a route, has not designated a schedule, and reserves the right to direct how the shuttle service shall be conducted at any given time." (App. 111).

V.

THOSE RESPONDENTS WHO NOW OPERATE SIGHTSEEING TOURS THROUGH THE MALL AT THE SUFFERANCE OF THE SECRETARY OF THE INTERIOR HAVE NO STANDING OR ANY SUBSTANTIVE RIGHT TO SEEK AN INJUNCTION OF PROHIBITING THE SERVICE PROPOSED BY THE SECRETARY.

The District Court correctly held that the respondents "who enjoy the right to operate their sightseeing services within the Mall area only at the sufferance of the Secretary . . . have no standing whatsoever" to petition the Court to enjoin the Secretary from engaging in similar operations on his own account (App. 112).

The Secretary has exclusive jurisdiction over the Mall area. D. C. Code §§ 8-108, 8-144; 16 U.S.C. §§ 1-3. The regulations of the National Park Service prohibit commercial solicitation in the Mall (App. 48). Uncontradicted testimony by the Director of the National Park Service and a legal adviser to the Secretary of the Interior establish that those companies which now conduct sightseeing tours on the Mall do so only at the sufferance of the Secretary (App. 42, 48). He could exclude them at any time if he saw fit. *U. S. v. Gray Line Water Tours of Charleston*, 311 F.2d 779 (4th Cir. 1962). Therefore, respondents now operating

tours on the Mall have no standing or any substantive right to seek an injunction prohibiting the operation of the service proposed by the Secretary.

CONCLUSION

The order of the Court of Appeals should be reversed and the cases remanded with instructions to dismiss the complaints and to deny the petitions for an injunction and for declaratory relief.

Respectfully submitted,

JEFFREY L. NAGIN
ALLEN E. SUSMAN
9601 Wilshire Boulevard
Beverly Hills, California, 90210

RALPH S. CUNNINGHAM, JR.
THOMAS P. MEEHAN
1815 H Street, N.W.
Washington, D.C., 20006

Attorneys for Petitioner

Of Counsel:

ROSENFELD, MEYER & SUSMAN
9601 Wilshire Boulevard
Beverly Hills,
California, 90210

ARENT, FOX, KINTNER,
PLOTKIN & KAHN
1815 H Street, N.W.
Washington, D.C., 20006

May, 1968

APPENDIX A**Relevant Portions of Principal Statutes Involved**

Act of July 1, 1898, 30 Stat. 570
as amended, D.C. Code § 8-108:

"The park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States."

Act of July 1, 1898, 30 Stat. 570
as amended, D.C. Code § 8-135:

"When in accordance with law or mutual legal agreement, spaces or portions of public land are transferred from the jurisdiction of the Director of the National Park Service as established by sections 5-204, 8-108, 8-110, 8-127, 8-135 and 8-143 to that of the commissioners of the District of Columbia, or vice versa, the letters exchanged between them of transfer and acceptance shall be sufficient authority for the necessary change in the official maps and for record when necessary." (July 1, 1898, 30 Stat. 570, ch. 543, § 5.)

Act of March 4, 1909, 35 Stat. 994
as amended, D.C. Code § 8-144:

"The application of the rules and regulations prescribed prior to March 4, 1909, or that may be thereafter prescribed by the Director of the National Park Service, under the authority granted by sections 5-204, 8-108, 8-110, 8-127, 8-135 and 8-143, for the Government and proper care of all public grounds placed by that act under the charge and control of the said Director of the National Park Service, is hereby extended to cover the side walks around the public grounds and the carriage-ways of such streets as lie between and separate the said public grounds. (Mar. 4, 1909, 35 Stat. 994, ch. 299, § 1.)"

**Act of August 25, 1916, 39
Stat. 535, 16 U.S.C. § 1:**

"There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director. The Secretary of the Interior shall appoint the director, and there shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conforms to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. Aug. 25, 1916, c. 408, § 1, 39 Stat. 535; Mar. 4, 1923, c. 265, 42 Stat. 1488; Mar. 3, 1925, c. 462, 43 Stat. 1176; Ex. Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, c. 38 § 1, 48 Stat. 389."

**Act of August 8, 1953, 67
Stat. 496, 16 U.S.C. § 1c:**

"(a) The term "National Park System" means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with the provisions of sections 1 and 2-4 of this title, and which are grouped into the following descriptive categories: (1) National parks, (2) national monuments, (3) national historical parks, (4) national memorials, (5) national parkways, and (6) national capital parks."

**Act of August 25, 1916, 39
Stat. 535, 16 U.S.C. § 2:**

"The director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments

which on August 25, 1916, were under the jurisdiction of the Department of the Interior and of such other national parks and reservations of like character as may be created by Congress . . .”

**Act of August 25, 1916, 39
Stat. 535, 16 U.S.C. § 3:**

“The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service . . .”

**Act of May 26, 1930, 46
Stat. 382, 16 U.S.C. § 17b:**

“The Secretary of the Interior is authorized to contract for services or other accommodations provided in the national parks and national monuments for the public under contract with the Department of the Interior, as may be required in the administration of the National Park Service, at rates approved by him for the furnishing of such services or accommodations to the Government and without compliance with the provisions of section 5 of Title 41. May 26, 1930, c. 324, § 3, 46 Stat. 382.”

**Act of October 9, 1965, 79
Stat. 969, 16 U.S.C. § 20:**

“CONCESSIONS FOR ACCOMMODATIONS, FACILITIES AND
SERVICES IN AREAS ADMINISTERED BY NATIONAL
PARK SERVICES [NEW]”

§ 20. Congressional findings and statement of purpose

In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended, which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them

unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas. Pub. L. 89-249, § 1, Oct. 9, 1965, 79 Stat. 969.

§ 20a. Authority of Secretary of the Interior to encourage concessioners

Subject to the findings and policy stated in section 20 of this title, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service. Pub. L. 89-249, § 2, Oct. 9, 1965, 79 Stat. 969.

§ 20b. Protection of concessioner's investment—Contract terms; compensation for loss of investment

(a) Without limitation of the foregoing, the Secretary may include in contracts for the providing of facilities and services such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment in structures, fixtures, improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract (but not against loss of anticipated profits) resulting from discre-

tionary acts, policies, or decisions of the Secretary occurring after the contract has become effective under which acts, policies, or decisions the concessioner's authority to conduct some or all of his authorized operations under the contract ceases or his structures, fixtures, and improvements, or any of them, are required to be transferred to another party or to be abandoned, removed, or demolished. Such terms and conditions may include an obligation of the United States to compensate the concessioner for loss of investment, as aforesaid.

**Profit commensurate with capital invested
and obligations assumed**

(b) The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Reasonableness of concessioner's rates and charges

(c) The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

**Determination of franchise fees; reconsideration
every five years or oftener**

(d) Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit involved. Such value is the opportunity for net profit

in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time. Pub. L. 89-249, § 3, Oct. 9, 1965, 79 Stat. 969.

§ 20c. New or additional services; preferential rights; operations by a single concessioner

The Secretary may authorize the operation of all accommodations, facilities, and services for visitors, or of all such accommodations, facilities, and services of generally similar character, in each area, or portion thereof, administered by the National Park Service by one responsible concessioner and may grant to such concessioner a preferential right to provide such new or additional accommodations, facilities, or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. The Secretary may, in his discretion, grant extensions, renewals, or new contracts to present concessioners, other than the concessioner holding a preferential right, for operations substantially similar in character and extent to those authorized by their current contracts or permits. Pub. L. 89-249, § 4, Oct. 9, 1965, 79 Stat. 970.

§ 20d. Renewal preference for satisfactory performance; extensions; new contracts; public notice

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit

to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, and before granting extensions, renewals or new contracts pursuant to the last sentence of section 20c of this title, the Secretary shall give reasonable public notice of his intention so to do and shall consider and evaluate all proposals received as a result thereof. Pub. L. 89-249, § 5, Oct. 9, 1965, 79 Stat. 970.

§ 20e. Concessioner's possessory interest in concession property; limitations; compensation for taking; determination of just compensation

A concessioner who has heretofore acquired or constructed or who hereafter acquires or constructs, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title, and except as hereinafter provided, which title shall be vested in the United States. Such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of the contract and of laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. The said possessory interest may be assigned, transferred, encumbered, or relinquished. Unless otherwise provided by agreement of the parties, just compensation shall be an amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States determined upon the basis of reconstruction cost less depreciation evidenced by its con-

dition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The provisions of this section shall not apply to concessioners whose current contracts do not include recognition of a possessory interest, unless in a particular case the Secretary determines that equitable considerations warrant recognition of such interest. Pub. L. 89-249, § 6, Oct. 9, 1965, 79 Stat. 970.

§ 20f. Use of non-monetary consideration in leases of government property

The provisions of section 303b of Title 40, relating to the leasing of buildings and properties of the United States, shall not apply to privileges, leases, permits, and contracts granted by the Secretary of the Interior for the use of lands and improvements thereon, in areas administered by the National Park Service, for the purpose of providing accommodations, facilities, and services for visitors thereto, pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, or the Act of August 21, 1935, chapter 593 (49 Stat. 666), as amended. Pub. L. 89-249, § 7, Oct. 9, 1965, 79 Stat. 971.

§ 20g. Record keeping; audit and examination; access to books and records

Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of each concessioner or subconcessioner have

access to and the right to examine any pertinent books, documents, papers, and records of the concessioner or sub-concessioner related to the negotiated contract or contracts involved. Pub. L. 89-249, § 9, Oct. 9, 1965, 79 Stat. 971."

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Act of September 15, 1960, 74
Stat. 1031, D.C. Code § 1-1410:

COMPACT FOR MASS TRANSPORTATION

Act of September 15, 1960

§ 1-1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

The consent and approval of Congress is hereby given to the States of Virginia and Maryland and to the District of Columbia to enter into a compact, substantially as follows,¹ for the regulation and improvement of mass transit in the Washington metropolitan area, which compact, known as the Washington metropolitan area transit regulation compact, has been negotiated by representatives of the States and the District of Columbia and has been adopted by the State of Virginia (ch. 627, 1958 Acts of Assembly), and in substance by the State of Maryland. (Sept. 15, 1960, 74 Stat. 1031, Pub. L. 86-794, § 1.)

PREAMBLE TO ACT SEPT. 15, 1960

"Whereas the regulation of mass transit service in the metropolitan area of Washington, District of Columbia, is divided among the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission; and

¹ The compact is set out as a note under this section.

"Whereas such divided regulatory responsibility is not conducive to the development of an adequate system of mass transit for the entire metropolitan area, which is in fact a single integrated, urban community; and

"Whereas the Legislatures of Virginia and Maryland and the Board of Commissioners of the District of Columbia in 1954 created a Joint Commission to study, among other things, whether joint action by Maryland, Virginia, and the District of Columbia is necessary or desirable in connection with the regulation of passenger carrier facilities operating in such areas and the provision of adequate, nondiscriminatory and uniform service therein; and

"Whereas said Joint Commission has actively participated in the mass transit study authorized by the Congress (Public Law 24 and Public Law 573, Eighty-fourth Congress), and in furtherance thereof said Joint Commission has negotiated the Washington metropolitan area transit regulation compact, set forth in full below, providing for the establishment of a single organization as the common agency of the signatories to regulate transit and alleviate traffic congestion, which compact has been enacted by Virginia (ch. 627, 1958 Act of Assembly) and in substantially the same language by Maryland (ch. 613, Acts of General Assembly 1959); and

"Whereas said compact adequately protects the national interest in mass transit service in the metropolitan area of the Nation's Capital and properly accommodates the National and State interests in and obligations toward mass transit in the metropolitan area: Now, therefore, be it"

PROPOSED COMPACT BETWEEN THE STATES OF MARYLAND AND VIRGINIA AND THE DIS- TRICT OF COLUMBIA

Act Sept. 15, 1960, provided that:

"The States of Maryland and Virginia and the District of Columbia, hereinafter referred to as signatories, do hereby covenant and agree as follows:

"TITLE I

"GENERAL COMPACT PROVISIONS

"ARTICLE I

"There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties, and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties. [See amendments to this article set out as a note to section 1-1410a.]

"ARTICLE II

"The signatories hereby create the 'Washington Metropolitan Area Transit Commission', hereinafter called the Commission, which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein.

"ARTICLE III

"1. The Commission shall be composed of three members, one member each to be appointed by the Governors of Virginia and Maryland and by the Board of Commissioners of the District of Columbia, from that agency of each signatory having jurisdiction over the regulation of mass transit within each such jurisdiction. The member so appointed shall serve for a term coincident with the term of that member on such agency of the signatory and any Commissioner may be removed or suspended from office as provided by the law of the signatory from which he shall be appointed. Vacancies shall be filled for an unexpired term in the same manner as an original appointment.

"2. No person in the employment of or holding any official relation to any person or company subject to the jurisdiction of the Commission or having any interest of any nature in any such person or company or affiliate or associate thereof, shall be eligible to hold the office of Commissioner or to serve as an employee of the Commission or to have any power or duty or to receive any compensation in relation thereto.

"3. The Commission shall select a chairman from its membership annually. Such chairman is vested with the responsibility for the discharge of the Commission's work and to that end he is empowered with all usual powers to discharge his duties.

"4. Each signatory hereto may pay the Commissioner therefrom such salary or expenses, if any, as it deems appropriate.

"5. The Commission may employ such engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis as in its judgment may be necessary for the discharge of its functions. The Commission shall not be bound by any statute or regulation of any signatory in the employment or discharge of any officer or

employee of the Commission, except as such may be contained in this compact.

"6. The Commission shall establish its office for the conduct of its affairs at a location to be determined by the Commission within the Metropolitan District and shall publish rules and regulations governing the conduct of its operations.

"ARTICLE IV

"1. The expenses of the Commission shall be borne by the signatories in the manner hereinafter set forth. The Commission shall submit to the Governor of Virginia, the Governor of Maryland and the Board of Commissioners of the District of Columbia, at such time or times as shall be requested, a budget of its requirements for such period as may be required by the laws of the signatories for presentation to the legislature thereof. The expenses of the Commission shall be allocated among the signatories in the proportion that the population of each signatory within the Metropolitan District bears to the total population of the Metropolitan District. The allocation shall be made by the Commission and approved by the Governors of the two states and the Board of Commissioners of the District of Columbia, and shall be based on the latest available population statistics of the Bureau of the Census; provided, however, that if current population data are not available, the Commission may, upon the request of any signatory, employ estimates of population prepared in a manner approved by the Commission and by the signatory making such request.

"2. The signatories agree to appropriate for the expenses of the Commission their proper proportion of the budget determined in the manner set forth herein and to pay such appropriation to the Commission. There shall not be included in the budget of the Commission or in the appropriations therefor any sums for the payment of salaries or expenses of the Commissioners or members of the

Traffic and Highway Board created by Article V of this Title I and payments to such persons, if any, shall be within the discretion of each signatory. The provisions of section 2-27 of the Code of Virginia shall not apply to any official or employee of the Commonwealth of Virginia acting or performing services under this Act.

"3. The expenses allocable to a signatory shall be reduced in an amount to be determined by the Commission if a signatory, upon request of the Commission, makes available personnel, services or material to the Commission which the Commission would otherwise have to employ or purchase. If such services in kind are rendered, the Commission shall return to such signatory an amount equivalent to the savings to the Commission represented by the contribution in kind.

"4. The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by such representatives of the respective signatories as may be duly constituted for that purpose.

"ARTICLE V

"1. There is hereby created in addition to the Commission a Traffic and Highway Board, hereinafter referred to as Board. This Board shall be composed of the Chairman of the Commission created by article II, who shall be chairman of this Board, and the heads of the traffic and highway departments of each of the signatories and of the counties and cities encompassed within the Metropolitan District, a representative of the National Capital Planning Commission, a representative of the National Capital Regional Planning Council, and a representative of each local and regional planning commission within the District. The representatives of the various planning commissions shall be designated by each such commission. The official in charge of the traffic and highway department of each of the signatories may appoint a member of his staff to serve in his stead with full voting powers.

"2. The Board shall make recommendations to the Commission with respect to traffic engineering, including the selection and use of streets for transit routing, the requirements for transit service throughout the Metropolitan District, and related matters. The Board shall also consider problems referred to it by the Commission and shall continuously study means and methods of shortening transit travel time, formulate plans with respect thereto, and keep the Compact Commission fully advised of its plans and conclusions.

"3. The Board shall serve the Commission solely in an advisory capacity. The Commission shall not direct or compel the Board or its members to take any particular action with respect to effectuating changes in traffic engineering and related matters, but the members of the Board in their capacity as officials of local government agencies shall use their best efforts to effectuate the recommendations and objectives of the Commission.

"4. The members of the Board shall serve with or without additional compensation as determined by their respective signatories.

"ARTICLE VI

"No action by the Commission shall be of effect unless a majority of the members concur therein; provided, that any order entered by the Commission pursuant to the provisions of title II hereof, relating to or which affect operations or matters solely intrastate or solely within the District of Columbia, shall not be effective unless the Commissioner from the signatory affected concurs therein. Two members of the Commission shall constitute a quorum.

"ARTICLE VII

"Nothing herein shall be construed to amend, alter, or in any wise affect the power of the signatories and the political subdivisions thereof to levy and collect taxes on

the property or income of any person or company subject to this Act or upon any material, equipment or supplies purchased by such person or companies or to levy, assess and collect franchise or other similar taxes, or fees for the licensing of vehicles and the operation thereof.

"ARTICLE VIII

"This compact shall be adopted by the signatories in the manner provided by law therefor. This compact shall become effective ninety (90) days after its adoption by the signatories and consent thereto by the Congress of the United States, including the enactment by the Congress of such legislation, if any, as it may deem necessary to grant this Commission jurisdiction over transportation in the District of Columbia and between the signatories and over the persons engaged therein, to suspend the applicability of the Interstate Commerce Act, the laws of the District of Columbia, and any other laws of the United States, to the persons, companies and activities which are subject to this Act, to the extent that such laws are inconsistent with, or in duplication of, the jurisdiction of the Commission or any provision of this Act, or any rule, regulation or order lawfully prescribed or issued under this Act, and to make effective the enforcement and review provisions of this Act.

"ARTICLE IX

"1. This compact may be amended from time to time without the prior consent or approval of the Congress and any such amendment shall be effective unless, within one year thereof, the Congress disapproves such an amendment. No amendment shall be effective unless adopted by each of the signatories hereto.

"2. Any signatory may withdraw from the compact upon one year's written notice to that effect to the other signatories. In the event of a withdrawal of one of the

signatories from the contract, the compact shall be terminated.

"3. Upon the termination of this compact, the jurisdiction over the matters and persons covered by this Act shall revert to the signatories and the Federal Government, as their interests may appear, and the applicable laws of the signatories and the Federal Government shall be reactivated without further legislation.

"Article X

"Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems within the Metropolitan District and, in order to effect such purposes, agrees to enact any necessary legislation to achieve the objectives of the compact to the mutual benefit of the citizens living within said Metropolitan District and for the advancement of the interests of the signatories hereto.

"Article XI

"1. If any part or provision of this compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact or the application thereof to other persons or circumstances and the signatories hereby declare that they would have entered into this compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

"2. In accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.

"TITLE II**"Compact Regulatory Provisions****"Article XII****"Transportation Covered**

"1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

"(1) transportation by water;

"(2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;

"(3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

"(4) transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District;

"(5) transportation performed by a common carrier by railroad subject to part I of the Interstate Commerce Act, as amended.

"(b) No transportation or person, otherwise subject to this Act, shall be exempt by reason of the fact that any part (not a major part as conditionally exempted by paragraph (a)(4) of this section) of the route between points in the Metropolitan District lies outside of the Metropolitan District; provided, however, that the provisions of this title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of

this title II be construed to infringe the exercise of any powers or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia constitution.

"(c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rates or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage. [See amendments to this section set out as a note to section 1-1410a.]

"Definitions

"2. As used in this Act—

"(a) The term 'carrier' means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.

"(b) The term 'motor vehicle' means any automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.

"(c) The term 'street railways' means any streetcar, bus, or other similar vehicle propelled or drawn by electrical or mechanical power on rails and use for transportation of passengers.

"(d) The term 'taxicab' means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject

to this Act, along the public streets and highways, as the passengers may direct.

“(e) The term ‘person’ means any individual, firm, copartnership, corporation, company, association or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

“General Duties of Carriers

“3. It shall be the duty of every carrier to furnish transportation subject to this Act as authorized by its certificate and to establish reasonable through routes with other carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint fares, and just and reasonable regulations and practices relating thereto; and, in case of joint fares, to establish just¹ reasonable, and equitable deviations² thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such carriers.

“Certificates of Public Convenience and Necessity; Routes and Services

“4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however; that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90

¹ So in original. Probably should have a comma.

² So in original. Probably should read “divisions”.

days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

“(b) When an application is made under this section for a certificate except with respect to a service being rendered upon the effective date of this Act, the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the transportation covered by the application, if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied. The Commission shall act upon applications under this subsection as speedily as possible. The Commission shall have the power to attach to the issuance of a certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require; provided, however, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

“(c) Application for a certificate under this section shall be made in writing to the Commission and shall be so verified, shall be in such form, and shall contain such information, as the Commission by regulations shall require. The Commission shall prescribe such reasonable requirements as to notices, publication, proof of service, and information as in its judgment may be necessary.

“(d)(1) Any certificate issued by the Commission shall specify the service to be rendered and the routes over

which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the carrier is authorized to operate.

"(2) A certificate for the transportation of passengers may include authority to transport in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, or to transport baggage of passengers in a separate vehicle.

"(3) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service. Such temporary authority unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of 180 days and create no presumption that corresponding permanent authority will be granted thereafter.

"(e) The Commission may, if it finds that the public convenience and necessity so require, require any person subject to this Act to extend any existing service or provide any additional service over additional routes within the Metropolitan District; provided, however, that no certificate shall be issued to operate over the routes of any holder of a certificate until it shall be proved to the satisfaction of the Commission, after hearing, upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public necessity and convenience; and provided, further, if the Commission shall be of opinion that the service rendered by such certificate holder over such route is in any respect inadequate to the requirements

of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to operate over such route; and further provided that no person subject to this Act may be required to extend any existing service or provide any additional service over additional routes within the Metropolitan District unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to this Act.

“(f) The Commission may refer to the Traffic and Highway Board created under Title I hereof any service proposed under an application for a certificate. The Board shall as speedily as possible give the Commission its recommendations with respect to the proposed service, but such recommendations shall be advisory only.

“(g) Certificates shall be effective from date specified therein and shall remain in effect until suspended or terminated as herein provided. Any such certificate, may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any lawful order, rule, or regulation of the Commission, or with any term, condition, or limitation of such certificate; provided however, that no certificate shall be revoked (except upon application of the holder) unless the holder thereof wilfully fails to comply, within a reasonable time, not less than 30 days, to be fixed by the Commission, with a lawful order of the Commission commanding obedience to the rules or regulations or orders of the Commission, or to the terms, conditions, or limitations of such certificate found by the Commission to have been violated by such holder. No certificate shall be issued to an applicant proposing to operate over the

routes of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission, after hearing upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public convenience and necessity; and provided, further, if the Commission shall be of the opinion that the service rendered by such certificate holder over such route is in any respect inadequate to the requirements of the public convenience and necessity, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate over such route.

“(h) No certificate under this section may be transferred unless such transfer is approved by the Commission as being consistent with the public interest.

“(i) No carrier shall abandon any route specified in a certificate issued to such carrier under this section, unless such carrier is authorized to do so by an order issued by the Commission. The Commission shall issue such order, if upon application by such carrier, and after notice and opportunity for hearing, it finds that the abandonment of such route is consistent with the public interest. The Commission, by regulations or otherwise, may authorize such temporary suspensions of routes as may be consistent with the public interest. The fact that a carrier is operating a route or furnishing a service at a loss shall not, of itself, determine the question of whether abandonment of the route or service over the route is consistent with the public interest as long as the carrier earns a reasonable return.

“Schedule of Fares, Regulations, and Practices

“5. (a) Each carrier shall file with the Commission, and print, and keep open to public inspection, tariffs showing (1) all fares it charges for transportation subject to this

Act, including any joint fares established for through routes over which it performs transportation subject to this Act in conjunction with another carrier, and (2) to the extent required by regulations of the Commission, the regulations and practices of such carrier affecting such fares. Such tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe. The Commission may reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void.

“(b) Each carrier which, immediately prior to the effective date of this section, was engaged in transportation specified in section 1(a) of this Title II, shall file a tariff in compliance with paragraph (a) of this Section 5 within ninety (90) days after such date. The fares shown in such tariff shall be the fares which such carrier was authorized to charge, immediately prior to such date, under the law under which it was then regulated, and the regulations and practices affecting such fares which shall be shown in such tariff shall be such of the regulations and practices, then in effect under such law, as the Commission shall by regulations require. Such tariff shall become effective upon filing. Pending the filing of such tariff, the fares which such carrier was authorized to charge immediately prior to the effective date of this Act under the law under which it was then regulated, and the regulations and practices relating to such fares, shall be the lawful fares and practices and regulations.

“(c) Every carrier shall keep currently on file with the Commission, if the Commission so requires, the established divisions of all joint fares for transportation subject to this Act in which such carrier participates.

“(d) No carrier shall charge, for any transportation subject to this Act, any fare other than the applicable fare specified in a tariff filed by it under this section and

in effect at the time. During the period before a tariff filed by it under this section has become effective, no carrier referred to in subsection (b) shall charge, for any transportation subject to this Act, any fare other than the fare which it was authorized to charge for such transportation immediately prior to the effective date of this section, under the law, under which it was then regulated.

“(e) Any carrier which desires to change any fare specified in a tariff filed by it under this section, or any regulation or practice specified in any such tariff affecting such a fare, shall file a tariff in compliance with this section, showing the change proposed to be made and shall give notice to the public of the proposed change by posting and filing such tariff in such manner as the Commission may by rule, regulation or order provide. Each tariff filed under this subsection shall state a date on which the new tariff shall take effect, and such date shall be at least thirty (30) days after the date on which the tariff is filed, unless the Commission by order authorizes its taking effect on an earlier date.

“Power to Prescribe Fares, Regulations, and Practices

“6. (a)(1) The Commission, upon complaint or upon its own initiative, may suspend any fare, regulation, or practice shown in a tariff filed with it under Section 5 (except a tariff to which Section 5(b) applies), at any time before such fare, regulation, or practice would otherwise take effect. Such suspension shall be accomplished by filing with the tariff, and delivered to the carrier or carriers affected thereby, a notification in writing of such suspension. In determining whether any proposed change shall be suspended, the Commission shall give consideration to, among other things, the financial condition of the carrier, its revenue requirements, and whether the carrier is being operated economically and efficiently. The period of suspension shall terminate ninety (90) days after the

date on which the fare, regulation, or practice involved would otherwise go into effect, unless the Commission extends such period as provided in paragraph (2).

"(2) If, after hearing held upon reasonable notice, the Commission finds that any fare, regulation or practice relating thereto, so suspended is unjust, unreasonable, or unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District, it shall issue an order prescribing the lawful fare, regulation, or practice to be in effect. The fare, regulation, or practice so prescribed shall take effect on the date specified in such order. If such an order has not been issued within the ninety (90) day suspension period provided for in paragraph (1), the Commission may from time to time extend such period, but in any event the suspension period shall terminate, no later than one hundred and twenty (120) days after the date the fare, regulation or practice involved was suspended. If no such order is issued within the suspension period (including any extension thereof), the fare, regulation or practice involved shall take effect at the termination of such period.

"(3) In the exercise of its power to prescribe just and reasonable fares and regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

"(4) It is hereby declared as a matter of legislative policy that in order to assure the Metropolitan District of

an adequate transportation system operating as private enterprises the carriers therein, in accordance with standards and rules prescribed by the Commission, should be afforded the opportunity of earning such return as to make the carriers attractive investments to private investors. As an incident thereto, the opportunity to earn a return of at least 6½ per centum net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, on gross operating revenues, shall not be considered unreasonable.

“(b) Whenever, upon complaint, or upon its own initiative, and after hearing held upon reasonable notice, the Commission finds that any individual or joint fare in effect for transportation subject to this Act, or any regulation or practice affecting such fare, is unjust, unreasonable or unduly preferential or unduly discriminatory, the Commission shall issue an order prescribing the lawful fare, regulation, or practice thereafter to be in effect.

“Through Routes, Joint Fares

“7. (a) In order to encourage and provide adequate transit service on a Metropolitan District-wide basis, any carrier may establish through routes and joint fares with any other carrier subject to this Act or the jurisdiction of the Interstate Commerce Commission, the State Corporation Commission of the Commonwealth of Virginia, or the Public Service Commission of the State of Maryland.

“(b) Whenever required by the public convenience and necessity, the Commission, upon complaint or upon its own initiative, and after hearing held upon reasonable notice, may establish through routes and joint fares for transportation subject to this Act, and the regulations or practices affecting such fares, and the terms and conditions under which such through routes shall be operated.

"(c) Whenever, upon complaint or upon its own initiative, and after hearing upon reasonable notice, the Commission is of the opinion that the divisions of any joint fare for transportation subject to this Act are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the participating carriers, the Commission shall prescribe the just, reasonable and equitable divisions thereof to be received by the participating carriers. The Commission may require the adjustment of divisions between such carriers from the date of filing the complaint or entry of the order of investigation, or such other date subsequent thereto as the Commission finds to be just, reasonable and equitable.

"Taxicab Fares"

"8. The Commission shall have the duty and the power to prescribe reasonable rates for transportation by taxicab only between a point in the jurisdiction of one signatory party and a point in the jurisdiction of another signatory party provided both points are within the Metropolitan District. The fare or charge for such transportation may be calculated on a mileage basis, a zone basis, or on any other basis approved by the Commission; provided, however, that the Commission shall not require the installation of a taximeter in any taxicab when such a device is not permitted or required by the jurisdiction licensing and otherwise regulating the operation and service of such taxicab.

"Security for the Protection of the Public"

"9. (a) No certificate of public convenience and necessity shall be issued under Section 4, and no certificate issued under such section shall remain in force, unless the person applying for or holding such certificate complies with such reasonable regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-in-

suror or other securities or agreements, in such reasonable amount as the Commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person, or for loss or damage to property of others, resulting from the operation, maintenance, or use of motor vehicles, street cars, or other equipment or facilities utilized in furnishing transportation subject to this Act.

“(b) No taxicab shall be permitted to transport passengers between a point in the jurisdiction of a signatory to a point in the jurisdiction of another signatory within the Metropolitan District unless the taxicab and the person or persons licensed by any signatory to own and/or operate such taxicab shall comply with such reasonable regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amounts as the Commission may require, conditioned to pay within the amount of such surety bonds, policies of insurance qualifications as a self-insurer or other securities or agreements, any final judgment recovered against such taxicab for bodily injuries to or the death of any person, or for loss or damage to property of others, resulting from the operation, maintenance or use of taxicabs utilized in furnishing transportation subject to this Act.

“Accounts, Records and Reports; Depreciation

“10. (a) The Commission may require annual or other periodic reports, and special reports, from any carrier; prescribe the manner and form in which such reports shall be made; and require from any such carrier specific answers to all questions upon which the Commission deems information to be necessary. Such reports shall be under oath whenever the Commission so requires.

"(b) Each carrier subject to the Commission shall keep such accounts, records, and memoranda with respect to activities in which it is engaged (whether or not such activities constitute transportation subject to this Act), including accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, as the Commission by regulation prescribes. The Commission shall by regulation prescribe the form of such accounts, records, and memoranda, and the length of time that such accounts, records, and memoranda shall be preserved.

"(c) The Commission shall prescribe regulations requiring carriers to maintain appropriate accounting reserves against depreciation. The Commission may prescribe the classes of property for which depreciation charges may properly be included under operating expenses and the rate of depreciation which shall be charged with respect to each of such classes of property, and may classify the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. Carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no carrier shall include under operating expenses any depreciation charge other than as prescribed by the Commission.

"(d) At all times the Commission and each of its members shall have access to all lands, buildings, and equipment of all carriers, and to all accounts, records, and memoranda kept by such carriers. When authorized by the Commission to do so, any employee of the Commission may inspect any such land, buildings, equipment, accounts, records, and memoranda. This section shall apply, to the extent found by the Commission to be reasonably necessary

for the administration of this Act, to any person controlling, controlled by or under common control with, any carrier.

“(e) Any carrier which operates both inside and outside of the metropolitan area and which has its principal office outside of the metropolitan area, may keep all of its accounts, records, and memoranda at such principal office but shall produce such accounts, records, and memoranda before the Commission whenever the Commission shall so direct.

“(f) Nothing in this section shall relieve any carrier from the obligations imposed upon it with respect to the matters covered in this section by any State or Federal regulatory commission in connection with transportation service rendered outside the Metropolitan District.

• • • • •

“Administration Powers of Commission; Rules, Regulations and Orders

“15. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Such rules and regulations may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty (30) days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of

persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

"Applicability of Other Laws

"20. (a) Upon the date this Act becomes effective, the applicability of all laws of the signatories, relating to or affecting transportation subject to this Act and to persons engaged therein, and all rules, regulations and orders promulgated or issued thereunder, shall except to the extent in this Act specified, be suspended, except that—

"(1) The laws of the signatories relating to inspection of equipment and facilities, wages and hours of employees, insurance or similar security requirements, school fares, and free transportation for policemen and firemen shall remain in force and effect.

"(2) Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit-holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, not withstanding any other provisions of this Act.

"(b) In the event any provision or provisions of this Act exceed the limits imposed upon the legislature of any signatory by the Constitution of such signatory, the obligations, duties, powers or jurisdiction sought to be conferred by such provision or provisions upon the Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the signatory and

shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective. Such agency, however, in order to achieve the objective of this compact to effectuate the regulation of mass transit on a unified and coordinated basis throughout the Metropolitan District, shall refer to the Commission for its recommendations all matters arising under this Title so reserved to such signatory and all matters exempted from this Title pursuant to the proviso clause of Section 1(b) of this Title. The recommendations of the Commission with respect to such matters shall be advisory only.

Existing Rules, Regulations, Orders, and Decisions

"21. All rules, regulations, orders, decisions, or other action prescribed, issued, made, or taken by the Interstate Commerce Commission, the Public Utilities Commission of the District of Columbia, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia, and which are in force at the time this section takes effect, with respect to transportation or persons subject to this Act, shall remain in effect, and be enforceable under this Act and in the manner specified by this Act, according to their terms, as though they had been prescribed, issued, made, or taken by the Commission pursuant to this Act, unless and until otherwise provided by such Commission in the exercise of its powers under this Act.

Transfer of Records

"22. The Public Utilities Commission of the District of Columbia, the Interstate Commerce Commission, the State Corporation Commission of Virginia, and the Public Service Commission of Maryland shall transfer or make available to the Commission such of their records as pertain to matters which by this Act are placed under the jurisdiction of the latter Commission.

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Act of September 15, 1960, 74 Stat. 1050, D. C. Code § 1-1412

§ 1-1412. Suspension of certain laws for duration of compact—Reinstatement of laws upon termination of compact—Certain police powers of parties to compact and Director of National Park Service not affected—Franchise rights and obligations of D.C. Transit System, Inc., not impaired—“Public Interest” includes interest of carrier employees—Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force—Jurisdiction of Public Service Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.

Upon the effective date of the compact and so long thereafter as the compact remains effective, the applicability of the laws of the United States, and the rules, regulations, and orders promulgated thereunder, relating to or affecting transportation under the compact and to the persons engaged therein, including those provisions of section 40-603(e), relating to the powers of the Public Service Commission of the District of Columbia and the Joint Board created under such section, is suspended, except as otherwise specified in the compact, to the extent that such laws, rules, regulations, and orders are inconsistent with or in duplication of the provisions of the compact: *Provided*, That upon the termination of the compact, the suspension of such laws, rules, regulations, and orders, if not theretofore repealed, shall terminate and such laws, rules, regulations, and orders shall thereupon again become applicable, and legally effective without further legislative or administrative action: *Provided further*, That nothing in this subchapter or in the compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities: *Provided*

further, That nothing in this subchapter or in the compact consented to and approved hereby shall impair or affect the rights, duties, and obligations created by the Act of July 24, 1956 (ch. 669, 70 Stat. 598), granting a franchise to D.C. Transit System, Inc.: *Provided further*, That the term "public interest" as used in section 12(b) of article XII, title 11 of the Compact shall be deemed to include, among other things, the interest of the carrier employees affected: *And provided further*, That nothing herein shall be deemed to render inapplicable any laws of the United States providing benefits for the employees of any carrier subject to this compact or relating to the wages, hours, and working conditions of employees of any carrier, or to collective bargaining between the carriers and said employees, or to the rights to self-organization, including, but not limited to, the Labor-Management Relations Act, 1947, as amended, and the Fair Labor Standards Act, as amended: Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Service Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission. (Sept. 15, 1960, 74 Stat. 1050, Pub. L. 86-794, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Act of July 24, 1956, 70 Stat. 598:

TITLE I

PART 1.—FRANCHISE PROVISIONS

SECTION 1. (a) There is hereby granted to D. C. Transit System, Inc., a corporation of the District of Columbia (referred to in this part as the "Corporation") a franchise to operate a mass transportation system of passengers

for hire within the District of Columbia and between the District of Columbia and points within the area (referred to in this part as the "Washington Metropolitan Area") comprising all of the District of Columbia, the cities of Alexandria and Falls Church, and the counties of Arlington and Fairfax in the Commonwealth of Virginia and the counties of Montgomery and Prince Georges in the State of Maryland; subject, however, to the rights to render service within the Washington Metropolitan Area possessed, at the time this section takes effect, by other common carriers of passengers: *Provided*, That nothing in this section shall be construed to exempt the Corporation from any law or ordinance of the Commonwealth of Virginia or the State of Maryland or any political subdivision of such Commonwealth or State, or of any rule, regulation, or order issued under the authority of any such law or ordinance, or from applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder.

(b) Wherever reference is made in this part to "D. C. Transit System, Inc." or to the "Corporation", such reference shall include the successors and assigns of D. C. Transit System, Inc.

(c) As used in this part the term "franchise" means all the provisions of this part 1.

SEC. 2. (a) This franchise is granted for a term of twenty years: *Provided, however*, That Congress reserves the right to repeal this franchise at any time for its non-use.

(b) In the event of cancellation of this franchise by Congress after seven years from the date this franchise takes effect for any reason other than non-use, the Corporation waives its claim for any damages for loss of franchise.

SEC. 3. No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers

of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia (referred to in this part as the "Commission") to the effect that the competitive line is necessary for the convenience of the public.

SEC. 4. It is hereby declared as a matter of legislative policy that in order to assure the Washington Metropolitan Area of an adequate transportation system operating as a private enterprise, the Corporation, in accordance with standards and rules prescribed by the Commission, should be afforded the opportunity of earning such return as to make the Corporation an attractive investment to private investors. As an incident thereto the Congress finds that the opportunity to earn a return of at least $6\frac{1}{2}$ per centum net after all taxes properly chargeable to transportation operations, including but not limited to income taxes; on either the system rate base or on gross operating revenues would not be unreasonable, and that the Commission should encourage and facilitate the shifting to such gross operating revenue base as promptly as possible and as conditions warrant; and if conditions warrant not later than August 15, 1958. It is further declared as a matter of legislative policy that if the Corporation does provide the Washington Metropolitan Area with a good public transportation system, with reasonable rates, the Congress will maintain a continuing interest in the welfare of the Corporation and its investors.

SEC. 5. The initial schedule of rates which shall be effective within the District of Columbia upon commencement of operations by the Corporation shall be the same as that effective for service by Capital Transit Company approved by the Commissioners of the District of Columbia pursuant to the Act of August 14, 1955 (Public Law No. 389, 84th Congress; 69 Stat. 724), in effect on the date of the

enactment of this Act, and shall continue in effect until August 15, 1957, and thereafter until superseded by a schedule of rates which becomes effective under this section. Whenever on or after August 15, 1957, the Corporation files with the Commission a new schedule of rates, such new schedule shall become effective on the tenth day after the date of such filing, unless the Commission prescribes a lesser time within which such new schedule shall go into effect, or unless prior to such tenth day the Commission suspends the operation of such new schedule. Such suspension shall be for a period of not to exceed one hundred twenty days from the date such new schedule is filed. If the Commission suspends such new schedule it shall immediately give notice of a hearing upon the matter and, after such hearing and within such suspension period, shall determine and by order fix the schedule of rates to be charged by the Corporation. If the Commission does not enter an order, to take effect at or prior to the end of the period of suspension, fixing the schedule of rates to be charged by the Corporation, the suspended schedule filed by the Corporation may be put into effect by the end of such period, and shall remain in effect until the Commission has issued an appropriate order based on such proceeding.

SEC. 6. The Corporation is hereby authorized and empowered to engage in special charter or sightseeing services subject to compliance with applicable laws, rules and regulations of the District of Columbia and of the municipalities or political subdivisions of the States in which such service is to be performed, and with applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder.

SEC. 7. The Corporation shall be obligated to initiate and carry out a plan of gradual conversion of its street railway operations to bus operations within seven years from the date of the enactment of this Act upon terms and

conditions prescribed by the Commission, with such regard as is reasonably possible when appropriate to the highway development plans of the District of Columbia and the economies implicit in coordinating the Corporation's track removal program with such plans; except that upon good and sufficient cause shown the Commission may in its discretion extend beyond seven years, the period for carrying out such conversion. All of the provisions of the full paragraph of the District of Columbia Appropriation Act, 1942 (55 Stat. 499, 533), under the title "HIGHWAY FUND, GASOLINE TAX AND MOTOR VEHICLE FEES", subtitle "STREET IMPROVEMENTS", relating to the removal of abandoned tracks, regrading of track areas, and paving abandoned track areas, shall be applicable to the Corporation.

SEC. 8. (a) As of August 15, 1956, paragraph numbered 5 of section 6 of the Act entitled "An Act making appropriations to provide for the expenses of the Government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes", approved July 1, 1902, as amended (D. C. Code, sec. 47-1701), is amended by striking out the third and fourth sentences and inserting in lieu thereof the following: "Each gas, electric-lighting, and telephone company shall pay, in addition to the taxes herein mentioned, the franchise tax imposed by the District of Columbia Income and Franchise Tax Act of 1947, and the tax imposed upon stock in trade of dealers in general merchandise under paragraph numbered 2 of section 6 of said Act approved July 1, 1902, as amended."

(b) Notwithstanding subsection (a) of this section, the Corporation shall be exempt from the following taxes:

- (1) The gross sales tax levied under the District of Columbia Sales Tax Act;
- (2) The compensating use tax levied under the District of Columbia Use Tax Act;

(3) The excise tax upon the issuance of titles to motor vehicles and trailers levied under subsection (j) of section 6 of the District of Columbia Traffic Act of 1925, as amended (D. C. Code, sec. 40-603 (j) (4));

(4) The taxes imposed on tangible personal property, to the same extent that the Capital Transit Company was exempt from such taxes immediately prior to the effective date of this section under the provisions of the Act of July 1, 1902, as amended; and

(5) The mileage tax imposed by subparagraph (b) of paragraph 31 of section 7 of the Act approved July 1, 1902, as amended (D. C. Code, sec. 47-2331 (b)).

SEC. 9. (a) Except as hereinafter provided, the Corporation shall not, with respect to motor fuel purchased on or after September 1, 1956, pay any part of the motor vehicle fuel tax levied under the Act entitled "An Act to provide for a tax on motor vehicle fuels sold within the District of Columbia, and for other purposes", approved April 23, 1924, as amended (D. C. Code, title 47, chapter 19).

(b) For the purposes of this section—

(1) the term "a $6\frac{1}{2}$ per centum rate of return" means a $6\frac{1}{2}$ per centum rate of return net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, on the system rate base of the Corporation, except that with respect to any period for which the Commission utilizes the operating ratio method to fix the rates of the Corporation, such term shall mean a return of $6\frac{1}{2}$ per centum net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, based on gross operating revenues; and

(2) the term "full amount of the Federal income taxes and the District of Columbia franchise tax levied upon corporate income" means the amount which would have been payable in the absence of write-offs in connection with

the retirement of street railway property as contemplated by section 7 of this part, but only to the extent that such write-offs are not included as an operating expense in determining net earnings for rate-making purposes.

(c) As soon as practicable after the twelve-month period ending on August 31, 1957, and as soon as practicable after the end of each subsequent twelve-month period ending on August 31, the Commission shall determine the Corporation's net operating income for such twelve-month period and the amount in dollars by which it exceeds or is less than a $6\frac{1}{2}$ per centum rate of return for such twelve-month period. In such determination the Commission shall include as an operating expense the full amount of the motor vehicle fuel tax which would be due but for the provisions of this section on the motor fuel purchased by the Corporation during the twelve-month period, and the full amount of the Federal income taxes and the District of Columbia franchise tax levied upon corporate income. The Commission shall certify its determination to the Commissioners of the District of Columbia or their designated agent. If the net operating income so certified by the Commission equals or is more than a $6\frac{1}{2}$ per centum rate of return, the Corporation shall be required to pay to such Commissioners, or their designated agent, the full amount of the motor vehicle fuel taxes due on the purchases of motor fuel made by the Corporation during such twelve-month period. If the net operating income so certified is less than a $6\frac{1}{2}$ per centum rate of return, the Corporation shall pay to such Commissioners, or their designated agent, in full satisfaction of the motor vehicle fuel tax for such period an amount, if any, equal to the full amount of said motor vehicle fuel tax reduced by the amount necessary to raise the Corporation's rate of return to $6\frac{1}{2}$ per centum for such period, after taking into account the effect of such reduction on the amount of the Federal income taxes and the District of Columbia franchise tax levied upon corporate income payable by the Corpora-

tion for such period. Within thirty days after being notified by the said Commissioners or their designated agent of the amount of the motor vehicle fuel tax due under this section, the Corporation shall pay such amount to the said Commissioners or their designated agent.

(d) If not paid within the period specified in subsection (c); the motor vehicle fuel tax payable under this section and the penalties thereon may be collected by the Commissioners of the District of Columbia or their designated agent in the manner provided by law for the collection of taxes due the District of Columbia on personal property in force at the time of such collection; and liens for the motor vehicle fuel tax payable under subsection (c) and penalties thereon may be acquired in the same manner that liens for personal property taxes are acquired.

(e) Where the amount of the motor vehicle fuel tax payable under subsection (c), or any part of such amount, is not paid on or before the time specified therein for such payment, there shall be collected, as part of the tax, interest upon such unpaid amount at the rate of one-half of 1 per centum per month or portion of a month.

(f) The Commissioners of the District of Columbia or their designated agent are hereby authorized and directed to issue to the Corporation such certificates as may be necessary to exempt it from paying any importer the motor vehicle fuel tax imposed by such Act of April 23, 1924, as amended, or as hereafter amended.

(g) (1) From and after the time fixed in paragraph (2) of this subsection the Corporation shall not be required to pay real estate taxes upon any real estate owned by it in the District of Columbia and used and useful for the conduct of its public transportation operations to the extent that the Commission has determined under such rules and regulations as it may issue that the Corporation's net operating income in the previous year was in-

sufficient, after giving effect to the tax relief provided in the preceding subsections, to afford it a 6½ per centum rate of return.

(2) This subsection shall take effect upon the completion of the program contemplated in section 7 of this part, as certified by the Commission to the Commissioners of the District of Columbia, or at such earlier time as the Commission may find that the said program has been so substantially completed that the taking effect of this subsection would be appropriate in the public interest and shall so certify to the Commissioners of the District of Columbia.

SEC. 10. (a) The Corporation shall not be charged any part of the expense of removing, sanding, salting, treating, or handling snow on the streets of the District of Columbia, except that the Corporation shall sweep snow from the streetcar tracks at its own expense so long as such tracks are in use by the Corporation.

(b) The paragraph which begins "Hereafter every street railway company" which appears under the heading "STREETS" in the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes", approved June 26, 1912 (D. C. Code, sec. 7-614), is hereby repealed.

SEC. 11. The provisions of law set forth in Title 43, sections 501 through 503 of the District of Columbia code shall not be deemed to restrict any merger or consolidation of the Corporation with any other company or companies engaged in mass transportation in the District of Columbia or the Washington Metropolitan Area: *Provided, however,* That any such merger or consolidation shall be subject to the approval of the Commission.

SEC. 12. Nothing in this part shall prevent the transfer, by or under the authority of any other Act of Congress, to

any other agency of any of the functions which are by this part granted to or imposed upon the Commission.

SEC. 13. (a) The Corporation is hereby authorized to issue or create loans, mortgages, deeds of trust, notes or other securities to any banking or other institution or institutions and to Capital Transit Company, with respect to the acquisition of assets of Capital Transit Company (including any corporation controlled by Capital Transit Company), provided that the interest rate thereon shall not exceed 5 per centum per annum, but the aggregate principal shall not exceed the cost of acquiring the assets of Capital Transit Company.

(b) (1) Section 5 of the Interstate Commerce Act shall not be construed to require the approval or authorization of the Interstate Commerce Commission of any transaction within the scope of paragraph (2) of such section 5 if the only parties to such transaction are the Corporation (including any corporation wholly controlled by the Corporation) and the Capital Transit Company (including any corporation wholly controlled by the Capital Transit Company). The issuance or creation of any securities provided for in subsection (a) shall not be subject to the provisions of section 20a of the Interstate Commerce Act.

(2) No approval of the acquisition of assets referred to in subsection (a), or of the issuance or creation of any securities provided for in subsection (a) in connection with such acquisition, shall be required from any District of Columbia agency or commission.

(c) This section shall not apply to any issuance of securities constituting a public offering to which the Securities Act of 1933 applies.

(d) Notwithstanding the provisions of section 409 (a) of the Civil Aeronautics Act of 1938—

(1) no air carrier shall be required (because of the fact that a person becomes or remains an officer, director, mem-

ber or stockholder holding a controlling interest of the Corporation, or of any common carrier controlled by the Corporation which is engaged in mass transportation of passengers for hire in the Washington Metropolitan Area, or is elected or reelected as an officer or director) to secure the authorization or approval of the Civil Aeronautics Board in order to have and retain such person as an officer or director, or both, of such air carrier if such person is an officer or director of such air carrier at the time this section takes effect; and

(2) no person who, at the time this section takes effect, is an officer or director of an air carrier shall be required to secure the approval of the Civil Aeronautics Board in order to hold the position of officer, director, member or stockholder holding a controlling interest of the Corporation or of any common carrier controlled by the Corporation which is engaged in mass transportation of passengers for hire in the Washington Metropolitan Area.

As used in this subsection, the term "air carrier" has the same meaning as when used in section 409 (a) of the Civil Aeronautics Act of 1938.

(e) Notwithstanding section 20a, (12) of the Interstate Commerce Act, authorization or approval of the Interstate Commerce Commission shall not be required in order to permit a person who is an officer or director of the Corporation to be also an officer or director, or both, of any common carrier controlled by the Corporation which is engaged in mass transportation of passengers for hire in the Washington Metropolitan Area.

SEC. 14. The Corporation, at the time it acquires the assets of Capital Transit Company, shall become subject to, and responsible for, all liabilities of Capital Transit Company of whatever kind or nature, known or unknown, in existence at the time of such acquisition, and shall submit to suit therefor as though it had been originally liable, and the creditors of Capital Transit Company shall have

as to the Corporation all rights and remedies which they would otherwise have had as to Capital Transit Company: *Provided, however,* That the Corporation shall not be liable to any dissenting stockholder of Capital Transit Company for the fair value of the stock of any such stockholder who shall qualify to be entitled to receive payment of such fair value. No action or proceeding in law or in equity, or before any Federal or District of Columbia agency or commission, shall abate in consequence of the provisions of this section, but such action or proceeding may be continued in the name of the party by or against which it was begun, except that in the discretion of the court, agency, or commission the Corporation may be substituted for the Capital Transit Company. In any and all such actions or proceedings, the Corporation shall have, and be entitled to assert, any and all defenses of every kind and nature which are or would be available to Capital Transit Company or which Capital Transit Company would be entitled to assert.

PART 2.—MISCELLANEOUS PROVISIONS

SEC. 21. (a) Section 14 of the joint resolution entitled "Joint resolution to authorize the merger of street-railway corporations operating in the District of Columbia, and for other purposes", approved January 14, 1933 (47 Stat. 752), as amended (Public Law 389, Eighty-fourth Congress), is hereby repealed to the extent that such section repeals the charter of Capital Transit Company, without thereby affecting the termination of its franchise.

(b) Upon the taking effect of part 1 of this title, Capital Transit Company shall not be authorized to engage in business as owner or operator of electric railway, passenger motor bus, public transportation of passengers, or common carrier of passengers within, to, or from, the Washington Metropolitan Area.

(c) Capital Transit Company shall continue to exist as a corporation incorporated under the provisions of sub-

chapter 4 of chapter 18 of the Act entitled "An Act to establish a code of laws for the District of Columbia", approved March 3, 1901, as amended (D. C. Code, title 29, ch. 2), under its certificate of incorporation, as amended, and Capital Transit Company may amend its charter in any manner provided under the laws of the District of Columbia and may avail itself of the provisions of the District of Columbia Business Corporations Act in respect to a change of its name and may become incorporated or reincorporated thereunder in any manner as therein provided. Nothing referred to in this title, or the sale and vesting of the assets of Capital Transit Company, referred to therein, shall cause or require the corporate dissolution of Capital Transit Company.

Sec. 22. Nothing in this title shall be deemed to extend the franchise of Capital Transit Company beyond August 14, 1956, or, except as otherwise provided in this section, to relieve Capital Transit Company of any obligation to remove from the streets and highways at its own expense all of its property and facilities and to restore the streets and highways in accordance with the provisions of the District of Columbia Appropriation Act, 1942 (55 Stat. 499, 533) in the event the Corporation fails to acquire the assets of Capital Transit Company. If part 1 of this title takes effect, Capital Transit Company shall thereupon be relieved of all liability to remove from the streets and highways of the District of Columbia all of its properties and facilities and to restore such streets and highways.

Sec. 23. The powers and jurisdiction of the Public Utilities Commission of the District of Columbia with respect to Capital Transit Company shall cease and be at an end upon the taking effect of part 1 of this title.

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APPENDIX B

H.R. Rep. No. 1621, 88th Cong., 2d Sess. 29-30 (1960)

CHANGES IN EXISTING LAW

There follows in parallel columns a listing of the Federal laws which are suspended in whole or in part to the extent that such laws are inconsistent with or in duplication of the provisions of the compact and of this resolution:

EXISTING FEDERAL LAWS

49 U.S. Code (1958 ed.) chapter 8, Interstate Commerce Act-Motor Carriers.

D.C. Code (1951 ed.): Title 40—Motor Vehicles, § 603 (e) Joint Board.

Title 43—Public Utilities, Ch. 1. Definition of terms and application of law; Ch. 3. Service, valuation, accounts; Ch. 4. Rates examinations, investigations, and hearings; Ch. 5. Sale and merger of utilities; Ch. 7. Orders and court proceedings; Ch. 8. Issuance of securities; Ch. 9. Penal provisions; Ch. 10. General provisions.

Title 44. Railroads and other carriers. Ch. 2. Street Railways and Bus Lines.

BILL AS INTRODUCED

SEC. 3. That, upon the effective date of the compact and so long thereafter as the compact remains effective, the applicability of the laws of the United States, and the rules, regulations, and orders promulgated thereunder, relating to or affecting transportation under the compact and to the persons engaged therein, including those provisions of section 6(e) of the District of Columbia Traffic Act, 1925, as amended by the Act approved February 27, 1931 (46 Stat. 1426; Sec. 40-603(e), D.C. Code, 1951 edition), relating to the powers of the Public Utilities Commission of the District of Columbia and the Joint Board created under such section, is suspended, except as otherwise specified in the compact, to the extent that such laws, rules, regulations, and orders are inconsistent with or in duplication of the provisions of the compact: Provided, That upon the termination of the compact, the suspension of such laws, rules, regulations, and orders, if not therefore repealed, shall terminate and such laws, rules, regulations, and orders shall thereupon again become applicable and legally

EXISTING FEDERAL LAWS

No comparable provision as section confers new jurisdiction on the federal courts.

BILL AS INTRODUCED

effective without further legislative or administrative action.

SEC. 5. Jurisdiction is hereby conferred (1) upon the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit, respectively, to review orders of the Washington Metropolitan Area Transit Commission as provided by section 17, article XII, title II, of the Washington metropolitan area transit regulation compact, and (2) upon the United States district courts to enforce the provisions of said title II as provided in section 18, article XII, title II, of said compact.



IN THE

JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. ~~100~~ 19UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION,*Petitioner,*

v.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION, *et al.*,*Respondents.*

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENT D. C. TRANSIT SYSTEM, INC.

Manuel J. Davis
Samuel M. Langerman
1420 New York Avenue, N. W.
Washington, D. C. 20005

*Attorneys for D. C. Transit
System, Inc.*

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Authorizing Capital Transit Company to Operate Over
Certain Routes in the District of Columbia B.1

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 978

**UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION,**

Petitioner,

**WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION, et al.,**

Respondents.

**ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

BRIEF FOR RESPONDENT D.C. TRANSIT SYSTEM, INC.

QUESTIONS PRESENTED

1. Whether the Washington Metropolitan Area Transit Commission, pursuant to the Washington Metropolitan Area Transit Regulation Compact, has regulatory jurisdiction over the for-hire transportation service which Universal Interpretive Shuttle Corporation proposes to perform in the District of Columbia under a contract with the Secretary of the Interior.

2. Whether the Secretary of the Interior has the statutory authority to operate a for-hire transportation service in the District of Columbia.

3. Whether the Congressional Franchise given to D. C. Transit protects it against the for-hire transportation service which Universal Interpretive Shuttle Corporation proposes to perform in the District of Columbia under a contract with the Secretary of the Interior.

4. Whether D. C. Transit has standing to seek injunctive relief.

COUNTERSTATEMENT OF THE CASE

The Mall area of the District of Columbia, bounded from north to west by the White House, Grant Memorial, Jefferson Memorial, and the Lincoln Memorial, is a national park area under the administrative jurisdiction of the Secretary of the Interior ("Secretary"), through the National Park Service ("Service"). (Executive Order of June 10, 1933, 5 U.S.C. § 132; D.C. Code (1967 ed.) § 8-108; Act of August 8, 1953, 67 Stat. 496, 16 U.S.C. § 1c). Each year millions of visitors come to the Mall to view the many national monuments, museums, and memorials located thereon. Some 15 million visitors were expected in 1967, a figure which may grow to 25 million by 1980 (App. 89-90).

Several common carriers of passengers by motor vehicle, including D. C. Transit System, Inc. ("Transit"), have been performing sightseeing operations in the Mall area for the particular benefit of such visitors. These operations consist of lecture tours conducted by guides licensed by the District Government after a written examination of their knowledge of points of interest in the District (App. 55, 65). Such operations have been certificated by the Washington Metropolitan Area Transit Commission ("Commission") in accordance with the provisions of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), approved by Act of September 15, 1960, 74 Stat. 1031, D.C. Code §§ 1-1410

to 1416, giving the Commission jurisdiction over passenger transportation for hire by motor vehicle performed in the District of Columbia and the nearby counties in Maryland and Virginia (the "Metropolitan District") (App. 55-56).

On March 17, 1967, the Department of the Interior entered into a contract with Universal Interpretive Shuttle Corporation ("Universal") for the provision of a daily, for-hire, "interpretive shuttle service" for the accommodation of visitors to the Mall (App. 67-87). Such service will be operated on several city streets outside the Mall and under the jurisdiction of the District Government, including 14th, 12th, 9th, 7th, 4th, 3rd, and 2nd streets among others, as well as on city streets within the Mall (App. 50, 63-64, 100).

Under the contract, Universal will operate "articulated trams" in both round-trip and shuttle service which will stop at 11 points of interest encompassing some 23 national monuments, memorials, museums and Federal buildings. Guides accompanying the trams will provide a continuous narration approved by the Service. Additionally, stationary guides will be provided at the 11 points of interest to furnish information to visitors whether or not they have paid for the narrated tour (App. 11-12). These guides, as well as all Universal employees coming into contact with the public, will wear uniforms identifying them as employees of Universal (App. 82).

The route to be followed by Universal will be essentially that used by the Service itself during a six-week experiment conducted in 1966 (App. 11, 21). Such route will be operated on a schedule requiring three trips per hour within the first four months of service and a minimum of twelve trips per hour within a year. Both the route and the schedule of trips are subject to final approval of the Secretary (App. 70, 71, 75).

Fares will be 25¢ per zone for a shuttle ride and 75¢ for a round trip. An all-day ticket selling for \$1.00 is also con-

templated, allowing a visitor to board a tram at any stop along the route as many times as desired (App. 12, 22).

For its part, Transit provides daily sightseeing tours on both an individual and group basis, with licensed guides, which cover almost all of the 23 buildings and monuments to be featured by Universal. These tours are operated, to a substantial extent, over the same city streets to be used by Universal (App. 60, 65, 119-24). Transit also provides regular route or scheduled service over some 20 routes traversing the major Mall arteries to be used by Universal (App. 60, 117-18). It has been estimated that Transit will lose over a million dollars annually in combined sightseeing and regular-route revenues as a result of Universal's proposed operation (App. 61).

The financial arrangements between the Secretary and Universal are as follows:

Universal supplies all the necessary capital and assumes all the risk of an operating loss (App. 68); Universal pays to the Secretary an annual franchise fee of \$1,320 plus 3% of its gross receipts from the preceding year (App. 77); in return Universal gets a reasonable opportunity to make a fair profit (App. 68).

Universal has decided not to apply for certification of its proposed operation by the Commission, having been advised by the Service that such certification is not necessary (App. 52).

SUMMARY OF ARGUMENT

I. Under the Compact, any for-hire transportation of passengers by motor vehicle performed in the District of Columbia requires certification by the Commission. Congress never intended to exempt transportation performed within national park areas administered by the Secretary, through the Service, from the Commission's jurisdiction. While transportation performed by the Government is exempted from the Com-

mission's jurisdiction, the transportation in issue will not be performed by the Government.

II. The Secretary has no authority to perform the transportation in issue. With limited exceptions, the Congress has never authorized the Secretary to perform common carrier service as a governmental function.

III. Independent of the Compact, the Congressional Franchise granted to Transit prohibits a competitive service in the District of Columbia of the nature proposed by Universal without certification by the Commission. This protection applies to Transit's sightseeing service as well as its regular route service.

ARGUMENT

INTRODUCTION

In an introduction to its argument Universal suggests that the decision of the Court of Appeals has subjected the plans of the Federal Government for the preservation and enhancement of a national park area, the Mall, to the oversight of a local, parochial agency. This suggestion lacks any real substance.

First, the Commission is much more than a local agency. It is an agency whose creation required an Act of Congress suspending certain Federal laws and vesting it with Federal regulatory functions previously delegated to and exercised by the Interstate Commerce Commission ("ICC"). It is an agency whose decisions are reviewable by Federal courts and whose very establishment can be altered or repealed by the Congress.¹ These certainly are not characteristics of a local agency.

Second, the Commission will not exercise a supervisory or oversight power over the Secretary. To require a "con-

¹ Act of September 15, 1960, 74 Stat. 1050-1, D.C. Code § 1-1412 (Pet. App. 35a-36a) and D.C. Code §§ 1-1415 and 1416 reproduced in Appendix "A" hereto.

cessioner" of the Secretary to obtain a certificate from the Commission to operate a for-hire motor carrier service is not tantamount to requiring the Secretary to obtain its approval of plans for the administration and development of a national park area in the Metropolitan District. The Secretary and only the Secretary will decide generally how the Mall should be managed. In particular, insofar as transportation operations are concerned, the Secretary and only the Secretary will decide whether all for-hire motor carriers of passengers should be allowed to enter the Mall or whether all such carriers should be excluded therefrom. As an alternative, the Secretary and only the Secretary will pick a "concessioner" to be given preferential operating rights. He may pick a carrier from the many already certificated by the Commission or he may pick a carrier that will have to seek such certification. If he picks an uncertificated carrier, he would seem to be voluntarily subjecting himself to no more oversight than he does by requiring the concessioner's equipment to meet all the safety requirements of the ICC (App. 69, 74).

Universal further suggests that the decision of the Court of Appeals is contrary to the "accommodation that Congress has expressed between the national and local interests". It would seem, however, that Congress fully intended the Commission to regulate for-hire transportation operations performed in national park areas in the Metropolitan District as an integral part of such accommodation. In the Preamble to the Compact, Congress specifically declared:

Whereas said compact adequately protects the *national* interest in mass transit service in the metropolitan area of the Nation's Capital and *properly accommodates* the *National* and State interests in and obligations toward mass transit in the metropolitan area . . . (D.C. Code § 1-1410, Pet. App. 10a; emphasis added.)

In the final analysis, the decision of the Court of Appeals merely recognizes a Congressional intent that a Congressionally-established commission charged with improving transit

service in the entire Metropolitan District should discharge such function in the heartland of the District where transit service is particularly necessary for the accommodation of millions of visitors.

PURSUANT TO THE COMPACT, THE COMMISSION HAS REGULATORY JURISDICTION OVER THE FOR-HIRE TRANSPORTATION OPERATION WHICH UNIVERSAL PROPOSES TO PERFORM IN THE DISTRICT OF COLUMBIA UNDER A CONTRACT WITH THE SECRETARY.

A. The Commission's Jurisdiction Extends to For-hire Transportation Operations Performed in Whole or in Part on Federal Property Within the Metropolitan District.

Universal first argues that the Commission has no jurisdiction over its proposed operation on the Mall because the Secretary, pursuant to several statutes enacted prior to the Compact, has been given an "exclusive" control thereover which has not been altered by enactment of the Compact. This argument is based upon the premise that the ICC and the Public Utilities Commission of the District of Columbia (PUC), two of the four predecessors of the Commission, never possessed any authority which modified such "exclusive" control. As will be discussed below, the Secretary did have "exclusive" control over national park areas, including the Mall, until legislation in the 1930's gave the ICC and PUC certain regulatory authority over for-hire motor carrier operations performed thereon. With the enactment of the Compact such authority was incorporated into the Commission's overall responsibility to improve transit and alleviate traffic congestion within the Metropolitan District "on a coordinated basis, without regard to political boundaries" (Compact, Article II, Pet. App. 11a).

This jurisdictional question can best be discussed by a chronological analysis of the pertinent statutes. By the Act

of July 1, 1898, 30 Stat. 570, D.C. Code § 8-108 (Pet App. 1a), Congress gave the Secretary, through predecessors of the Service, "exclusive charge and control" of park areas in the District of Columbia. Such grant of authority was not unique to the national parks in the District of Columbia, however. Around the same period the Secretary was similarly granted "exclusive control" over several other park areas throughout the country, including Sequoia National Park, Mount Rainier National Park, Wind Cave National Park, Mesa Verde National Park, and Glacier National Park.²

By the Act of August 25, 1916, 39 Stat. 535, 16 U.S.C. §§ 1-3 (Pet. App. 2a-3a), the Service was established to provide, under the Secretary's direction, for the "supervision, management, and control" of the national park system. Later, by the Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. § 17b (Pet. App. 3a), the Secretary was authorized "to contract for services or other accommodations" provided in the national parks.

At this point in time Universal, pursuant to the Secretary's "exclusive" control over national parks and his authority "to contract for services", certainly could have performed the operation in issue and been subject to only the Secretary's regulation. However, legislation was passed in 1931, 1935, and 1960 which has qualified the Secretary's "exclusive" jurisdiction insofar as for-hire operations of motor carriers of passengers are concerned.

²The Secretary's jurisdiction over these five parks is derived from the following enactments, pertinent portions of which are reproduced in Appendix "A" hereto: Sequoia National Park, Act of September 25, 1890, 26 Stat. 478, 16 U.S.C. § 43; Mount Rainier National Park, Act of March 2, 1899, 30 Stat. 994, 16 U.S.C. § 92; Wind Cave National Park, Act of January 9, 1903, 32 Stat. 765, 16 U.S.C. § 142; Mesa Verde National Park, Act of June 29, 1906, 34 Stat. 617, 16 U.S.C. § 112; Glacier National Park, Act of May 11, 1910, 36 Stat. 354, 16 U.S.C. § 162.

The Act of February 27, 1931, 46 Stat. 1424, 1426, D.C. Code § 40-603(e) (reproduced in Appendix "A" hereto), provided in part as follows:

That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District. . . , to regulate their schedules. . . , to locate their stops . . . is vested in the (PUC).

Pursuant to this authority the PUC regulated all routes of Transit's predecessor which traversed the Mall. As an example thereof, PUC Order No. 1623, dated August 5, 1937 (reproduced as Appendix "B" hereto), granted the following route authority:

Capital Transit Company be and it is authorized and directed to operate buses over the following route: From terminal on the south side of P Street, Southwest, east on P Street to 4th Street, *north on 4th Street to Washington Drive, west on said Drive to 9th Street*, north on 9th Street to Pennsylvania Avenue . . . (The five-block Washington Drive portion of this route for which the emphasis has been added is entirely in the Mall.)

With the enactment of Part II of the Interstate Commerce Act, Act of August 9, 1935, 49 Stat. 543, 49 U.S.C. § 301 et seq., a further limitation was placed on the once "exclusive" character of the Secretary's jurisdiction over national parks throughout the country. Section 203(b)(4) of this Act, 49 U.S.C. § 303(b)(4) (reproduced in Appendix "A" hereto), provides that:

. . . the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments.

In accordance with this Congressional directive, in *Motor Carrier Safety Regulations-Exemptions*, 10 M.C.C. 533, 538 (1938), the ICC applied its safety regulations to motor carrier operations performed in the national parks. Furthermore, the ICC has even exercised economic jurisdiction over motor carriers operating in national parks consistent with and subject to the statutory authority of the Secretary. See, for example, *Smoky Mountain Tours Company Common Carrier Application*, 10 M.C.C. 127 (1938), and *Huff Common Carrier Application*, 27 M.C.C. 643 (1941).

Next we come to the statute which lies at the very core of this controversy, the Act of September 15, 1960, 74 Stat. 1031, D.C. Code § 1-1410 et seq., approving the Compact. Before considering the effect this legislation had on the jurisdiction of the Secretary over national parks, it is helpful to bear in mind the primary objective of the Compact.

Prior to 1960 four separate agencies regulated for-hire motor transportation performed in the Metropolitan District—the ICC, PUC, and State commissions in Maryland and Virginia. The Compact was intended to centralize the regulatory responsibilities of these four agencies in a single agency, the Commission, and thereby substitute a comprehensive system of regulation for fragmentary or piecemeal regulation.³ The United States Court of Appeals for the District of Columbia Circuit has described this regulatory scheme as follows:

When Congress consented to the Compact in 1960, it elected to treat the metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these in-

³House Report No. 1621 of the 86th Congress, 2d Session, accompanying H.J. Res. 402 (May 18, 1960), pp. 6-7.

cluded the issuance by the Commission of a certificate of public convenience and necessity.⁴

Turning now to a consideration of the impact of the Act of 1960 on the Secretary's jurisdiction over national parks, Section 3 thereof, 74 Stat. 1050, D.C. Code § 1-1412 (Pet. App. 35a), provides in part as follows:

[N]othing in this Act or in the Compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities.

Although the legislative history of the Compact is silent as to the congressional intent underlying this language of the second proviso of Section 3, such intent can be reasonably deduced.

First, if, as contended by Universal, the Congress thereby intended to exclude from the Commission's jurisdiction national parks under the authority of the Secretary, it surely would have used plain language to this effect. The language used, however, is not descriptive of such authority.⁵ Rather, it is descriptive only of the limited traffic or police authority which the signatory states of Maryland and Virginia, and even their political subdivisions, were allowed to retain over

⁴*D. C. Transit System, Inc. v. Washington Met. Area Tr. Com'n.*, U.S. App. D.C. ___, 376 F.2d 765, 767, cert. denied, 389 U.S. 847.

⁵The Department of the Interior underscored this fact in its legislative comments on the Compact prior to its enactment, noting that "police powers is not a term descriptive of the authority and responsibilities of the Director of the National Park Service" (House Report No. 1621, *supra*, p. 49). Cf. Section 209(a) of the Interstate Commerce Act, 49 U.S.C. § 309(a) (reproduced in Appendix "A" hereto), where specific reference is made to the "Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior".

for-hire motor carriers of passengers subject to the Commission's comprehensive regulation.

In this connection the Interior Department recommended the following amendment to Section 3 which would have specifically referred to the statutory authority under which the Secretary administers the national park system:

[N]othing in this Act or in the Compact shall affect the authority and responsibility of the Secretary of the Interior pursuant to Section 3 of the Act of August 25, 1916, as amended, and other Acts of Congress controlling the development and use of national parks, monuments, and reservations comprising the National Park System. House Report No. 1621, *supra*, p. 49.

The very failure of the Congress to enact such a broad exception to the Commission's jurisdiction strongly indicates an intent to include national parks in the Metropolitan District within the purview of the Commission's jurisdiction.⁶

Second, the language of the second proviso of Section 3 must be construed in conjunction with other provisions in Section 3. The last sentence thereof provides:

Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Utilities Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission.

⁶As no mention of such recommendation is made by the House Judiciary Committee in its report on H.J. Res. 402, it cannot be said with certainty that the Committee rejected the matter for the reason that it intended the Compact to apply to national park areas. Such explanation would, under the circumstances, seem more reasonable than the alternative suggested by Universal that the Committee dismissed such an amendment as an unnecessary refinement.

Such provision surely indicates that the regulatory authority which the predecessors of the Commission exercised over operations of for-hire motor carriers performed in national parks in the Metropolitan District has been vested, during the life of the Compact, in the Commission.⁷

Third, the Compact itself specifies the type of operations that are intended to be excepted from the Commission's jurisdiction. Five such operations are enumerated in Section 1(a) of Article XII (Pet. App. 18a). None of these specific exceptions applies to operations performed by for-hire motor carriers in park areas. By comparison, see Section 203(b)(4) of the Interstate Commerce Act, 49 U.S.C. § 303(b)(4), reproduced in Appendix "A" hereto.

Fourth, it would have been entirely inconsistent for the Congress to have authorized the Commission, under Article II of the Compact, to regulate "on a coordinated basis without regard to political boundaries within the Metropolitan District" and then to have established such a political boundary over national parks.

Finally, from a practical standpoint, if the Congress intended the Commission to discharge effectively its responsibilities under Article II of the Compact to improve transit operations and alleviate traffic congestion within the Metropolitan District, it must surely have intended to give the Commission jurisdiction over the very heart of the District, the Mall, where literally millions of visitors are drawn each year.

No Congressional enactment since the approval of the Compact in 1960 has in anyway altered the Commission's

⁷In this connection, Section 21 of Article XII of the Compact provides that all outstanding rules, regulations and orders of the ICC and PUC with respect to transportation of persons subject to the Compact shall remain in effect and be enforceable as though they had been prescribed or issued by the Commission, "unless and until otherwise provided by such Commission in the exercise of its powers under this Act".

regulatory jurisdiction over for-hire transportation in the District of Columbia. The Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. § 20, heavily relied on by Universal, neither gave the Secretary any new authority nor took any authority from the Commission. The principle purpose of such legislation was merely to put into statutory form policies which generally had been followed by the Service in contracting for concessions within the national parks.⁸

As noted by the Department of Justice on page 13 of its appellate brief in this proceeding:

It is not necessary to find a grant of authority in the Act of October 9, 1965. . . That statute was enacted not as a grant of authority to the Secretary to contract with concessionaires (an authority he had traditionally exercised under the pre-existing provisions of 16 U.S.C. sec. 17b) but to encourage a greater use of concessionaires by specifically authorizing the execution of contracts containing provisions advantageous to the concessionaires . . . Thus, the 1965 Act has no direct application to the congressional intent on the main issue, i.e., the alleged transfer of authority to the Washington Metropolitan Area Transit Commission in 1960.

Upon analysis of all the statutes involved, it is reasonably clear that notwithstanding the Secretary's broad administrative authority over national parks areas in the Metropolitan District, including his unquestioned authority to contract for the operation of for-hire transportation services thereon, the Congress intended the regulatory requirements of the Compact to extend to for-hire transportation operations performed in all areas of the Metropolitan District, including national parks.

It should be emphasized that the foregoing discussion has assumed that the operation proposed by Universal will be

⁸1965 U.S. Code Cong. and Adm. News, p. 3489, citing Senate Report No. 765, 89th Congress, 1st Session, accompanying H.R. 2901 (September 22, 1965).

performed entirely on the Mall. - This is not the case, however. Universal's proposed operation will cross several streets which are outside park grounds and subject to the police jurisdiction of the D. C. Government (App. 50, 63-64, 100). Accordingly, even if the Commission has no authority to regulate Universal's operations on the Mall, it clearly has authority to regulate such operations on city streets outside the Mall.

In this connection, the Trial Court found that D.C. Code § 8-144 (Pet. App. 1a) authorized "the passage by Park authorities over the D. C. public streets for purposes of going from one section of Park land to another". While this may be true, it certainly does not vest ultimate control over such streets in the Director of the Service or authorize passage thereover by a concessioner of the Director without a certificate from the Commission.

For its part Universal relies on D.C. Code § 8-135 (Pet. App. 1a) in attempting to play down the fact that its proposed service will be operated over several streets outside the Mall and under the jurisdiction of the D. C. Government. Under this code provision jurisdiction over public lands may be transferred from the D. C. Government to the Director of the Service, or vice versa, pursuant to "mutual" legal agreement. On page 11 Universal suggests that arrangements for such a transfer of jurisdiction are now being made with respect to the several city streets outside the Mall which will be used in its operation. As of this date, no such transfer has been made and there is nothing to indicate that the D. C. Government is "mutually" agreeable thereto.

Several statements by Universal warrant passing comment. On pages 18, 19, and 24, Universal cites a proviso to the D. C. Traffic Act of 1925 as affirming the "exclusive" jurisdiction of the Secretary over national parks in the District of Columbia. Quite the contrary, this proviso affords a good example of how such "exclusive" jurisdiction was qualified by authority vested in the PUC.

By the Traffic Act of 1925, Congress provided for the regulation of motor vehicle traffic in the District of Columbia by a Director of Traffic. Incorporated into the scheme of regulation was a proviso to protect the jurisdiction of the Chief of Engineers, later transferred to the Service, over vehicular traffic in park areas. This proviso read as follows:

Nothing contained in this Act shall be construed to interfere with the exclusive charge and control *heretofore committed* to the Chief of Engineers over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control. (Act of March 3, 1925, 43 Stat. 1119, 1126 D.C. Code § 40-613; emphasis added.)

By the Act of February 27, 1931, 46 Stat. 1424, 1426, D.C. Code § 40-603(e), the Congress authorized the PUC to regulate bus operations in the District but did not update the proviso in the Act of 1925 to exclude park areas from the PUC's jurisdiction. Recognition of such fact is readily found in D.C. Code § 40-613, reproduced in Appendix "A" hereto; wherein the "heretofore committed" language of the proviso in the Act of 1925 has been codified as "prior to March 3, 1925, committed".

In short after the Act of 1931 the Chief of Engineers, and later the Service, had exclusive charge and control over park areas in the District insofar as the jurisdiction of the Director of Traffic was concerned, but not insofar as the jurisdiction of the PUC was concerned. With the enactment of the Compact the Congress clearly transferred the PUC's jurisdiction over park areas to the Commission.

On pages 22 and 23 Universal cites several cases upholding the exclusive right of Congress to control public lands of the United States, which right may be exercised through broad authority delegated to the Secretary. No one questions such principle. Rather, it is being contended that the Congress has seen fit to delegate certain authority over mo-

tor carrier operations in national park areas to the PUC, ICC, and the Commission in lieu of delegating "exclusive" control over such areas to the Secretary.

On pages 26 and 27 Universal contends that the Secretary has acquiesced in the PUC's and Commission's past assertions of jurisdiction over buses and taxis operating in the Mall but has not abdicated any of his "exclusive" jurisdiction thereover. Accordingly, it is contended that the Secretary "has determined that to fulfill his statutory duties he alone must regulate" Universal's proposed operation. The trouble with this contention is that only the Congress, and not the Secretary, can properly determine whether the PUC and the Commission should exercise certain jurisdiction over national park areas concurrently with the Secretary.

On pages 27-32 Universal goes to great lengths to prove that the statutes under which the Secretary administers the national parks were not "suspended" by the enactment of the Compact. No such outright suspension was deemed necessary because the statutes administered by the Secretary do not fundamentally relate to the transportation embraced by the Compact. However, this does not mean that park areas administered by the Secretary were in no way affected by the enactment of the Compact. As discussed hereinabove, the application of the Compact to such park areas is rooted not in the suspension of the Secretary's statutory authority but in the suspension and transfer to the Commission of the regulatory authority of the ICC and PUC existing prior to the enactment of the Compact.

On pages 32-33 Universal argues that the failure of Congress to adopt the amendment to the second proviso to Section 3 of the consent legislation recommended by the Secretary is "at least equally consistent with the conclusion that Congress believed the amendment was unnecessary". This argument might be valid if considered in the abstract. When considered in the light of the sharply contrasting language of the provisos to the Traffic Act of 1925 and the Interstate Commerce Act, the pre-existing delegations of

authority over motor carrier operations in park areas to the PUC and ICC, and of the purpose of Congress in enacting the Compact to centralize all regulatory responsibilities in a single agency and thereby remove all political boundaries within the Metropolitan District, the Congressional intent in failing to adopt the Secretary's recommendation becomes reasonably certain.

On page 34 Universal suggests the term "police powers" used in Section 3 of the consent legislation should be interpreted to include the full scope of the Secretary's pre-existing authority. This is exactly what Transit has been arguing all along—that the language of Section 3 was intended to preserve authority that had been non-"exclusive" in nature since 1931.

On pages 35-36 and 38 Universal paints a picture of "intolerable, irreconcilable conflicts" between the Commission and the Secretary. Such picture is completely misleading. In practice when two agencies administering separate laws have jurisdiction concurrent in nature requiring them to grant dual approval to certain operations, a comity generally exists which enables the agencies to discharge their fundamental responsibilities in a spirit of cooperation not frustration. For example, a dual jurisdiction now exists under the Compact whereby both the Commission and the ICC regulate such matters as safety, insurance, accounting, borrowing, and consolidations. The Congress was not concerned that any real conflicts would materialize from such dual regulation and none have. There is absolutely no reason to believe that the Congress was concerned that the Commission and the Service would be unable to establish a similar comity of regulations.⁹

Also on page 36 Universal contends that the Act of 1960 by which Congress consented to the Compact was not

⁹The comity of regulations established between the ICC and the Secretary was described in *Motor Carrier Safety Regulations - Exemptions*, 10 M.C.C. 533, 538.

"affirmative legislation". To the contrary, the affirmative nature of the consent legislation was aptly described in House Report No. 1621, *supra*, as follows:

In article VIII the compact recognizes that affirmative legislation by the Congress [is required] to remove Federal jurisdiction from the sphere of compact action . . . The compact, therefore, provides that it shall become effective 90 days after its adoption by the signatories and consent thereto by the Congress and the enactment by the Congress of legislation to remove the Federal jurisdiction from the area of compact activity. . . (Page 9)

Section 3 of House Joint Resolution 402 [D.C. Code § 1-1412] provides for removal of Federal jurisdiction relating to or affecting transportation under the compact and to the persons engaged therein. The removal of Federal jurisdiction is by suspension of applicable laws and regulations rather than their repeal . . . (Page 19)

Moreover, the affirmative nature of the consent legislation is seen in Section 2 thereof, D.C. Code § 1-1411, which authorizes the Commissioners of the District of Columbia to enter into the compact and authorizes to be appropriated such funds as are necessary to carry out the obligations of the District of Columbia thereunder.

Finally, on pages 36-38 Universal cites *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956), as being relevant to the case at bar. The *Miller* case is readily distinguishable because it dealt with a conflict between State and Federal laws. Here, only Federal statutes are involved—the Acts administered by the Secretary and the Act approving the Compact—and there is no necessary conflict between them. Additionally, the *Miller* case is distinguishable because it involved a bona fide contractor as opposed to a concessioner like Universal, the significance of which will be discussed later.

B. The Contract Between the Secretary and Universal Contemplates the Performance of a For-hire Transportation Operation Between Points in the Metropolitan District.

Universal contends on pages 38-41 that its proposed Mall operation is not the type of "transportation" covered by Section 1 of Article XII of the Compact (Pet. App. 18a). Universal argues, first, that such operation will not be a "commuter" or "mass transit" service and, second, that such operation will not be performed "between any points" in the Metropolitan District. Universal's first argument is entirely negated by the legislative history of the Compact, the language of the Compact, and numerous court decisions affirming the Commission's jurisdiction over "non-commuter" operations. Universal's second argument is entirely negated by the facts.

To begin with, it is most difficult to understand Universal's treatment of the terms "mass transit" and "commuter" as being synonymous. *Webster's New International Dictionary*, Second Edition, Unabridged, defines the adjective "mass" as follows: "Of, pert. to, or characteristic of a mass or the masses (see 3d MASS. 6)". The reference in parentheses is to the following definition of the noun "mass": "With *the*, the general body of mankind, a race, a nation, etc.; pl., the great body of the people, as contrasted with the classes; the populace; the proletariat." The word "commuter" is defined as "one who travels back and forth between a city and an outside residence".

In other words it would appear reasonable to define "mass transit" as being synonymous with "public transit" but certainly not with "commuter" transit.

In the light of the numerous references in both the legislative history and the Compact to the words "transit" and "traffic" in general terms, it is unquestionably clear that the Congress intended the Commission to have jurisdiction over all forms of mass or public transit performed in the

Metropolitan District, including sightseeing, charter, and local service as well as interurban or commuter service. Illustrative references are as follows, the emphasis having been added:

The function of the instant Compact is to improve *transit* service offered by the existing privately owned companies through coordinated regulation and improvement of *traffic* conditions on a regional basis. . .

Under the existing regulatory arrangement, four separate commissions, each acting within its own sphere, participate in the regulation of *transit* in the metropolitan area. . .

The centralization of regulatory authority in a single agency, which would be substantially achieved under the subject legislation, is an essential step in bringing about a more satisfactory *transit* service. [House Report No. 1621, 86th Congress, *supra*, pp. 6-7]

The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of *transit* and the alleviation of *traffic* congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District. [Compact, Article II]

Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of *transit* and *traffic* problems within the Metropolitan District . . . [Compact, Article X]

It is interesting to note in the Preamble itself that the purpose of the Compact is set forth in general terms as follows (D.C. Code § 1-1410):

The establishment of a single organization as the common agency of the signatories to regulate *transit* and alleviate *traffic* congestion. [Emphasis added.]

Moreover, it should be emphasized that the nature of the operations intended to be covered by the Compact are set forth in Section 1(a) of Article XII in the most general terms: "transportation for hire . . . between any points in

the Metropolitan District". Certainly, if the Congress intended to limit the Commission's jurisdiction to a particular type of service, it would have said something like "commuter or interurban transportation for hire . . .". Phrased differently, if the Compact was not intended to apply to non-commuter operations performed within the District of Columbia, would the Congress not have simply exempted such operations in the same fashion that intra-Virginia transportation is exempted by Section 1(b) of Article XII?

The Commission's jurisdiction over sightseeing or charter operations, clearly non-"commuter" in nature, has been affirmed in the following decisions:

Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n., 323 F.2d 777 (4th Cir. 1963);

Gadd v. Washington Met. Area Tr. Com'n., 121 U.S. App. D.C. 7, 347 F.2d 791 (1965);

Holiday Tours, Inc. v. Washington Met. Area Tr. Com'n., 122 U.S. App. D.C. 96, 352 F.2d 672 (1965);

D. C. Transit System, Inc. v. Washington Met. Area Tr. Com'n., 366 F.2d 542 (4th Cir. 1966).

In passing it seems beyond dispute that transportation services to be made available to 15,000,000 annual visitors to the Mall Area would be characterized as "mass transit" services.

Universal also contends that it will not operate "between any points" in the District, quoting language from Section 2(a) of its contract with the Secretary (App. 71) which refers to a service "originating and terminating at the same point, with no passengers embarking or debarking enroute". From a strictly physical standpoint, it would seem that a service originating at Capitol Hill, traveling to the Lincoln Memorial, and returning to Capitol Hill is an operation "between" those two points whether or not any passenger is allowed to debark enroute. However, assuming *arguendo* the validity of Universal's contention, it is quite clear that the contract

contemplates other types of services which will be operated "between points" in the District of Columbia.

The official news release issued by the Department states that a three-zone service will be established, with a charge of 25¢ per zone, and that an all-day ticket is planned which will permit a visitor to board the tram at any stop along the route as many times as desired (App. 22). The Vice-President of Universal confirmed that, as the corporate name suggests, it would operate a shuttle service as well as provide all-day tickets (App. 12).

Can there be any dispute that a shuttle service which carries a visitor from zone 1 to zone 2 for 25¢ fare is an operation "between points"? Moreover, by permitting passengers using an all-day ticket to board as many times during the day as desired along route, Universal surely is contemplating a service which will be operated "between points" of interest in the Mall.

In view of the foregoing Universal proposes to perform an operation which is fully embraced within the description of the Commission's jurisdiction set out in Section 1(a) of Article XII of the Compact.¹⁰ Accordingly, Universal must obtain a certificate from the Commission as required by Section 4(a) of Article XII of the Compact (Pet. App. 20a).

C. Universal and Not the Secretary Will Perform the Contemplated Transportation Operation.

Universal contends on pages 42-44 that the operation in issue will in effect be an activity of the Federal Government which is exempt from the Commission's jurisdiction under Section 1(a)(2) of Article XII of the Compact (Pet. App. 18a). Universal argues that if the Government can provide the Mall service directly and be exempt from regulation, it can provide such service indirectly through a concessioner and the Section 1(a)(2) exemption will still be applicable.

¹⁰ Universal has not disputed that the proposed service will be "for hire" or that it will be a "carrier of persons" as those terms are used in Section 1(a).

Universal's argument ignores the clear language of Section 1(a)(2) which establishes an exemption for transportation "by" the Federal Government. The very use of the word "by" instead of the word "for" indicates that only operations actually performed by the Government itself are to be exempted from regulation.

Assuming *arguendo* that pursuant to an agency relationship a third party can perform a transportation operation for the Government and be exempted from the Commission's regulation, the contract between Universal and the Secretary negates any such relationship. The contract requires Universal to:

1. Supply all the necessary capital and assume all the operating risks (App. 68);
2. Supply all personnel and equipment necessary for the proposed operation (App. 72);
3. Pay to the Secretary an annual franchise fee of \$1,320.00 (App. 77);
4. Pay to the Secretary 3% of its gross receipts from the preceding year (App. 77);
5. Supply employees coming in direct contact with the public a uniform by which they may be "known and distinguished" as Universal's employees (App. 82).

These requirements have clearly not made Universal an agent of the Secretary. It is nothing more than a "concessioner" or entrepreneur whose acts are not legally attributable to the Government.

The case cited by Universal, *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18 (1940), has no relevancy to this proceeding. It involved a bona fide "contractor" who was paid to perform certain construction services for the Government; he was not required to pay a franchise fee or to assume the operating risks of a profit-seeking venture.

The correct relationship between the Secretary and Universal is described in *United States v. Gray Line Water Taxi of Charleston*, 311 F.2d 779 (4th Cir. 1962), a case in which the Secretary granted a concession to a water carrier to transport visitors to Fort Sumter, a national monument not accessible by land. As noted by the Court on page 781:

... neither the necessary investment, nor the assumption of the obligations, for such a service would be forthcoming from private sources without some substantial proof of the probable success of the venture. The inducement the Government tendered to an entrepreneur took the form of a preference in the use of the pier.¹¹

In view of the foregoing, it is clear that the proposed transportation service will be performed by Universal, not the Federal Government, and the exemption in Section 1(a) (2) of Article XII is not applicable.

II

THE SECRETARY OF THE INTERIOR HAS NO STATUTORY AUTHORITY TO PERFORM A FOR-HIRE TRANSPORTATION OPERATION IN THE DISTRICT OF COLUMBIA.

Universal's argument that the for-hire transportation involved herein is "transportation by the Federal Government" assumes the existence of statutory authority for the Secretary, through the Service, to perform such transportation. It is submitted that no such authority exists in the Act of 1916 establishing the Service or the subsequent enactments administered by the Service; for the performance of transportation for-hire is not generally deemed to be a governmental function.¹²

¹¹ Under Section 15(a) of the contract Universal is granted a similar preference (App. 81).

¹² In the *Gray Line* case, *supra*, the Court stated on page 781 that the Secretary has authority to perform for-hire transportation services himself. Transit submits that such statement was dictum and not

None of the statutes cited by Universal, codified at 16 U.S.C. §§ 1, 1c, 2, 3, 17b, and 20a-g (Pet. App. 2a-9a), authorizes the Secretary himself to operate any for-hire transportation services. To the contrary, the Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. § 20a (Pet. App. 4a), specifically provides that the Secretary "shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as 'concessioners') to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service". This provision emphasizes that Congress intends for private persons and not the Federal Government to provide the services in dispute herein.

The Act of August 8, 1953, 67 Stat. 495, 16 U.S.C. § 1b (reproduced in Appendix "A" hereto), highlights the Secretary's lack of authority to perform the contemplated operation. This Act specifically authorized the Secretary to operate a for-hire motor carrier service for his employees at the Carlsbad Caverns National Park in New Mexico. The legislative history thereof clearly indicates that prior to 1953 the Secretary had no authority to perform any for-hire transportation operations in the national parks.

In a letter of July 24, 1953, to the Chairman of the Senate Committee on Interior and Insular Affairs, the Interior Department made the following statement in its legislative comments on H.R. 1524, the bill enacted on August 8, 1953:

This proposed legislation is designed to provide essential housekeeping authority that is needed to manage efficiently the national park system. The provisions

controlling here. Moreover, it is incorrect for the reasons explained in this argument. Even if correct, however, the application thereof would seem to be limited to the peculiar circumstances in which the Federal property involved is not accessible by land.

of this bill are limited to those matters that are important in the management of that system and are founded upon many years of experience in that field. *It is important that our administrative authority in this field keep pace with our responsibilities.* [Emphasis added.] 1953 U.S. Code Cong. and Adm. News, pp. 2241-42.

It is also noteworthy that the Act of August 8, 1953, specifically prohibited the Secretary from performing for-hire transportation services "if adequate transportation facilities are available . . . by any common carrier at reasonable rates. . . ."

Universal has pointed to no enactment subsequent to 1953, and Transit has found none, by which the Secretary has been given any additional authority to perform for-hire transportation operations for either employees or visitors.

In passing, the recent legislative history of the National Visitor Center Facilities Act of 1968, Public Law 90-264 (H.R. 12603), approved March 12, 1968, 82 Stat. 43 (1968 U.S. Code Cong. & Adm. News, pages 403-07), sheds additional light on this question of the Secretary's statutory authority.

As initially introduced, H.R. 12603 contained language in Section 5 which specifically directed the Secretary to provide transportation of visitors by the United States in the Mall area. Such language, however, was deleted from the bill as reported by the House Committee on Public Works, and as later passed by the House, which substituted therefor a requirement that the Secretary report to the Congress by January 15, 1968, on the results of a complete study of the problems of transporting visitors along the Mall and its vicinity. (House Report No. 810 of the 90th Congress, dated October 23, 1967, page 5.)

In commenting to the Senate Committee on Public Works on H.R. 12603 as passed by the House, the following recommendations were made by the Department of the Interior:

The Department's authority to provide an interpretive transportation service for visitors along the Mall has recently been questioned in the Federal courts of the District of Columbia. We believe, however, that the issue is one of legislative policy that should be decided by legislation rather than by awaiting the conclusion of costly litigation. We believe that the Department has authority to provide such service and that the enactment of legislation would clarify our existing authority and might make continuation of the litigation unnecessary. If the final decision in the pending litigation should be against the Department, we believe that legislation will be needed to give the Department such authority, and since the authority is needed now the Department should not be required to await the outcome of the litigation. . .

In order to have the most effective interpretive program for visitors to the Nation's Capital, we believe the bill should confirm the Secretary of the Interior's authority to provide an interpretive transportation service along the Mall (an authority which we believe presently exists but which has been challenged), and also grant authority to provide such service between the Mall and the National Visitor Center and between other areas administered by the National Park Service within the District of Columbia and its environs, including any additional visitor facilities that may be established in the future. We therefore recommend that the following section be added to the bill to give the Secretary this broader authority . . . ¹³

The deletion of Section 5 of H.R. 12603 as introduced and the subsequent failure of the Congress to adopt the

¹³Letter of December 26, 1967 from Stanley A. Cain, Acting Director of the Department, to Chairman Randolph of the Senate Committee on Public Works, Senate Report No. 959 of the 90th Congress, accompanying H.R. 12603, dated February 5, 1968, pages 9-10; 1968 U.S. Code Cong. & Adm. News, pages 449-50.

recommendations of the Department of the interior are strong evidence of the continuing Congressional intent to withhold authority from the Secretary to perform transportation for-hire in the national parks as a governmental function.¹⁴

III

THE CONGRESSIONAL FRANCHISE GRANTED TO TRANSIT PROTECTS IT AGAINST THE FOR-HIRE TRANSPORTATION OPERATION WHICH UNIVERSAL PROPOSES TO PERFORM IN THE DISTRICT.

For the most part Universal's argument on pages 44-50 is an attempt to support the conclusions of the District Court, found at page 111 of the Appendix, that the protective provisions of Transit's Franchise, Act of July 24, 1956, 70 Stat. 598 (Pet. App. 36a-48a), are not applicable to the operation proposed by Universal. Perhaps the best way to discuss this argument is, at the outset, to summarize the findings of the District Court on each of the pertinent sections of the Franchise:

1. Section 1 grants Transit a franchise to operate a "mass transportation" system within the District of Columbia and between the District and nearby suburbs. The District Court found that only the "mass movement of the public of Washington, D. C." was the subject of Congressional protection.

2. Section 3 prohibits the establishment in the District of a "competitive" bus line which runs over a "given route on a fixed schedule" without certification by the PUC. The District Court found that it is difficult to characterize Universal's proposed operation as proceeding over such route on such schedule

¹⁴Cf. the Alaska Railroad Act, Act of March 12, 1914, 38 Stat. 305, as amended, 48 U.S.C. § 301, and Executive Order No. 3861, June 8, 1923, 48 C.F.R. § 5.1, under which the Secretary is specifically authorized to engage in the transportation of passengers for hire.

or as being in any way competitive with the "fundamental function" of Transit.

3. Section 6 authorizes Transit to engage in special charter or sightseeing services. The District Court found that Transit's sightseeing and charter operations within the Mall are conducted under "separate and unprotected authority".

A careful analysis of each of these three items will illustrate that the Congressional intent is much broader than the Court's construction thereof. Beginning with Section 1, the District Court has defined "mass transportation" to be synonymous with the "mass movement of the public of Washington, D. C.", meaning, presumably, residents of the District. There is absolutely nothing in this section which indicates that the Congress intended Transit's Franchise to protect the movement of only a limited class of passengers, residents of the District, as opposed to the movement of all classes of passengers in the District, visitors and commuters as well as residents. Quite the contrary, there is every reason to believe that Congress intended the words "mass transportation" in the Franchise to have as broad an application and construction as the words "mass transit" in the consent legislation to the Compact.

From a strictly practical standpoint the limitation imposed by the District Court would be impossible to apply. As a common carrier of passengers, Transit must serve all persons in the District who tender the proper fare for an intra-District movement. It cannot seek to determine which of such persons are visitors or commuters and not residents.

Skipping for the moment the language of Section 3 and going to the language of Section 6, the District Court found that Transit's sightseeing and charter operations are not protected by the Franchise. Apparently, the District Court believed that the very fact of a separate reference to sightseeing operations in Section 6 evidenced a Congressional intent to omit such operations from the protection of the Franchise. There is nothing in Section 1 or Section 6, how-

ever, suggesting that a sightseeing operation is not also a "mass transportation" operation. In view of the fact that Transit's sightseeing operations, like those proposed by Universal, are made available to millions of visitors annually attracted to the Mall, it would seem clear that such operations are a form of "mass transportation" in the District.

While it is certain, as discussed below, that the protection granted Transit operates only against a competitive service running "over a given route on a fixed schedule", this does not mean conversely that the Franchise protects only the portion of Transit's service running "over a given route on a fixed schedule". In terms of lost passengers and revenues, the competitive impact on Transit is not in any way changed by the fact that its existing service being duplicated is a sight-seeing operation as distinguished from a regular route operation.

Turning now to Section 3 of the Franchise, the District Court found that Universal's proposed service would not operate "over a given route on a fixed schedule" and would not compete with Transit's "fundamental function", the latter phrase apparently referring to Transit's extensive regular route service traversing the Mall area.¹⁵ Let us consider each of these findings separately.

The District Court apparently based its finding with respect to the "given" character of Universal's route on two factors: that the Secretary has not designated a route and that the contract specifies that service will be provided "along such routes as may be approved by the Secretary". It is submitted that the first factor is erroneous and the second factor is immaterial.

The fact that the Secretary has designated a route is evidenced by the statement of Universal's Vice President

¹⁵ Transit operates some 20 regular routes over the major streets in the Mall in addition to its Mall sightseeing operations (App. 60, 117-18).

enumerating the 11 points of interest it will serve over a route "essentially the same as that used by the National Park Service during their six week experiment in 1966" (App. 11-12). A map of the "Shuttle Tour Route" accompanied his statement (App. 16). Confirmation of the Secretary's designation of this particular route is found in a news release of the Department of the Interior (App. 21).

Moreover, it is clear that shuttle service as well as all-day tickets will be provided (App. 12, 22). Surely, it must be obvious that unless Universal intends to operate a taxi service with its 83-seater trams, shuttle and all-day services entail the operation of a "given" or established route. Otherwise, a passenger getting off at a particular point would never know in advance how long he would have to wait there before another tram might come by, if at all.

Ironically, the District Court itself recognized the real character of Universal's route. In setting out the facts, the Court refers to the "prescribed" route to be operated by Universal and describes it in detail as follows (App. 100):

... East out of the Monument grounds through the Mall via Jefferson and Adams Drives to 2nd Street; briefly north on 2nd Street to connect with Washington Drive; west through the Mall by Washington and Madison Drives to the Monument grounds; south through Park land, on the west side of the Bureau of Engraving and Printing; then continuing to and encircling the Jefferson Memorial; thereafter by way of Ohio Drive and 23rd Street to Lincoln Memorial; passing between the Reflecting Pool and the Memorial; then via Beacon Drive to Constitution Avenue and east to the Ellipse; circling the Ellipse and returning through the Monument grounds to the starting point.

The fact that the Secretary must approve or can change Universal's route in no way alters the "given" character thereof. Once his approval is granted or once he orders a change, the "approved" or "changed" route becomes estab-

lished insofar as both Universal and the public are concerned. By comparison under PUC, ICC and Commission procedures motor common carrier routes and schedules are always subject to change, generally initiated by the carriers and approved by the commissions, in order to accommodate the changing needs of the public.

Universal's schedule of operations is set forth in Section 6 of the contract (App. 75). This section requires that Universal operate three trips per hour within the first four months of operation and a minimum of twelve trips per hour within the first year of operation. It is also required that Universal's service be available every day of the year except Christmas Day between the hours of 9:00 a.m. and 10:00 p.m. from April 15 through Labor Day and between the hours of 9:30 a.m. and 5:00 p.m. the rest of the year. It is submitted that Universal's schedule of operations is thereby so substantially established as to constitute the "fixed" character described in Section 3 of the Franchise. The fact that the Secretary must approve Universal's schedule does not change this fundamental character, as discussed above in connection with the Secretary's approval of Universal's route.

With regard to the "competitive" effect which Universal's proposed operation will have on Transit's existing service, the District Court found that such competition will exist only with respect to Transit's sightseeing services which are not entitled to the protection of Section 3 of the Franchise. Such finding is erroneous because it completely ignores the unrefuted testimony that Transit will lose approximately \$150,000 in revenues from its extensive regular route operations traversing the Mall (App. 61), which operations even the District Court acknowledged are entitled to protection. (App. 111). Surely, visitors to Washington who now use Transit's regular routes to travel between points on the Mall, as for example from the Capitol to the White House or the National Gallery of Art, will be able to use Universal's shuttle service instead (App. 117).

Furthermore, contrary to the finding of the District Court, Transit's sightseeing operations on the Mall are also entitled to the protection of Section 3 of the Franchise. As noted previously, such sightseeing operations clearly are "mass transportation" in nature and Section 3 is not limited in application to competition solely with Transit's regular routes.¹⁶

In this connection, it should be emphasized that Section 3 of the Franchise followed almost word for word the language of Section 4 of the so-called Merger Act of January 14, 1933, 47 Stat. 760, D. C. Code § 44-201 (reproduced in Appendix "A" hereto). Accordingly, it would appear that Congress has thereby ratified the court decisions which defined the scope of the protection afforded by Section 4 of the Merger Act. *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U.S. 110, 114-15 (1939). One such decision held that:

The unequivocal language of the statute is sufficiently comprehensive to cover all kinds of operations of a competitive bus line, be they intrastate or interstate. *Oriole Motor Coach Co. v. Public Utils. Com'n.*, 111 F. Supp. 621, 622 (D.C. D.C. 1953).

When it is considered that Universal's proposed service will duplicate Transit's existing sightseeing service on the Mall in the following four fundamental respects, it is obvious that the two services will be competitive:

1. Operating over substantially the same streets, both inside and outside the Mall;
2. Providing a service attractive to the same class of persons—tourists;
3. Employing guides particularly knowledgeable about local points of interest;

¹⁶The argument that the Franchise protects only Transit's regular routes was recently rejected by the United States District Court for the District of Columbia, in *D.C. Transit System, Inc. v. Stewart E. Udall, et al.*, Case No. 1122-68 (May 27, 1968), in granting a motion for preliminary injunction against the operation by the Government of an interpretive service similar to that proposed by Universal herein.

4. Providing service to essentially the same points of interest.

The impact of such competition on Transit's existing sightseeing services on the Mall, individual and group, was estimated at over a million dollars annually (App. 61).

In view of the foregoing, irrespective of any requirements of the Compact, Universal's proposed operation is precluded by the Franchise until a requisite certificate of public convenience and necessity has been issued by the Commission. The fact that the protective provisions of Transit's Franchise are in no way impaired by the Compact has recently been recognized in *D. C. Transit System, Inc. v. Washington Met. Area Tr. Com'n.*, 376 F.2d 765, 769 (D.C. Cir. 1967).

Several of the statements made by Universal warrant passing reference. On page 46 Universal suggests that its service is "unique". On the contrary, several carriers, including Transit, now provide substantially similar interpretive services (App. 55, 65).

On page 47 Universal suggests that Section 6 of the Franchise becomes merely a "redundant provision" under Transit's contention that sightseeing services are embraced within the term "mass transportation". This section is not redundant at all. Without it, there would have been doubt as to whether the Congress intended to allow Transit to perform services beyond the Washington Metropolitan Area and subject to the laws and regulations of the "municipalities or political subdivisions of the States in which such service is to be performed, and with applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder".

On pages 48-49 Universal argues that Transit's contention that the proposed service will operate "over a given route on a fixed schedule" flatly contradicts the Commission's administrative practice of issuing certificates describing sightseeing services as "irregular route" or "special" operations. Here Universal is seeking to establish a mutually exclusive relationship, suggesting that a service cannot be both "sight-

seeing" and "regular route" in nature. This is fallacious reasoning.

It is true that sightseeing or irregular route operations are normally distinguishable from regular route operations in two respects:

1. The former generally operate according to pre-arranged schedules but may vary such schedules without Commission permission (or not run a particular trip if the demand therefor is inadequate); the latter must operate strictly according to schedule irrespective of the public demand, the Commission's permission being a prerequisite to a scheduling change.

2. The former generally follow an established route but may vary such route without Commission permission; the latter must follow their established routes, making changes therein only after Commission permission has been obtained.

Such general distinction does not mean, however, that a sightseeing service cannot be operated in such a manner as to take on the operational characteristics of a "regular route". See, for example, *Asbury Park v. Bingler*, 62 M.C.C. 731, affirmed at 132 F. Supp. 792 and 350 U.S. 921, in which the ICC held that an operation conducted under "sightseeing or pleasure" authority could duplicate a regular route operation to such an extent as to require regular route authority.

Finally, on page 49 Universal suggests that the provisions of Section 6 of the contract refer to minimum equipment requirements and not to schedule requirements. The very purpose of imposing an equipment requirement is to assure that a carrier adequately performs its schedule of operations. Universal can call the provisions of Section 6 whatever it wants; the fact remains that under such provisions Universal's minimum schedule of operations has been "fixed".

**D. C. TRANSIT SYSTEM, INC. HAS STANDING
TO SEEK INJUNCTIVE RELIEF.**

It is true that Transit can be excluded from the Mall by the Secretary. This fact does not negate Transit's standing to enjoin any arbitrary or discriminatory exercise by the Secretary of such exclusionary power or, as here, to enjoin the Secretary from engaging in common carrier services in excess of his statutory authority and in violation of Transit's Franchise and Certificate of Public Convenience and Necessity No. 5.

Transit's Franchise and Certificate No. 5 are valuable property rights which cannot be taken or diminished without regard to due process of law. *Monongahela Nav. Co. v. United States*, 148 U.S. 312 (1892); *Frost v. Corporation Commission*, 278 U.S. 515 (1929); *Movers Conference of America v. United States*, 205 F. Supp. 82 (1962); and *Rock Island Motor Transit Co. v. United States*, 90 F. Supp. 516 (1949), *rev'd on other grounds*, 340 U.S. 419 (1950). Of particular relevancy, in *Capital Transit Co. v. Safeway Trails, Inc.*, 92 U.S. App. D.C. 20, 201 F.2d 708, 709 (1953), the Court held that the provisions of Section 4 of the Merger Act, *supra*, gave Transit's predecessor "a status which is legally protectible".

THE POSITION OF THE UNITED STATES IS NOT WELL-FOUNDED.

In essence, the Government's Memorandum contends that a local agency, administering a law designed solely to foster commuter service within the Metropolitan District, has no authority over national park areas which have always been under the exclusive jurisdiction of the Service. The Government thus pictures an irreconcilable conflict between local and national laws as well as local and national interests, with the former negating the latter. To the extent that such contention merely restates the arguments contained in Universal's brief which have already been covered herein, further discussion is unnecessary. However, it would seem desirable to comment briefly on a few statements made in the Government's Memorandum for purposes of clarification.

On page 3 is it suggested by the Government that, since the Congress has consistently maintained a basic dichotomy between municipal and national affairs in legislating with respect to the District of Columbia, it could never have intended the Commission to exercise jurisdiction over motor carrier operations on Federal property. The following language in the Preamble to the Compact fully refutes such suggestion:

Whereas said compact adequately protects the *national* interest in mass transit service in the metropolitan area of the Nation's Capital and properly accommodates the *National* and State interests in and obligations toward mass transit in the metropolitan area . . . (D.C. Code § 1-1410, emphasis added.)

On page 10 the Government states that Universal's "incidental" movement of visitors is "wholly extraneous" to the purpose for which the Commission was created. In other words, the suggestion here is that a sightseeing service to be offered out-of-state and foreign visitors coming to Washington has no real effect on the Commission's responsibility to

improve transit service and alleviate traffic congestion in the entire Metropolitan District. It would seem perfectly obvious that any for-hire transportation service, whether or not sightseeing in nature, which is operated daily in the very heartland of the Metropolitan District and which involves the movement of millions of passengers annually is inseparably related to the general transit and traffic problems of the District.

On page 12 the Government suggests the likelihood that the Congress believed the "police powers" language in Section 3 of the consent legislation was "as effective to maintain the status quo as was the use of the term 'authority and responsibility of the Secretary'". If the Government is herewith contending that the "police powers" proviso in the consent legislation merely preserved the then-existing, non-exclusive authority of the Secretary over national parks, Transit wholeheartedly agrees.

It would appear, however, that the language recommended by the Secretary was designed to go further—to resurrect the once "exclusive" character of his jurisdiction over national parks in the Metropolitan District—and therefore the intent underlying the Congressional failure to adopt such language cannot, as suggested by the Government, be reasonably equated with the dismissal of an "unnecessary refinement".

The enactment of the National Visitor Center Facilities Act of 1968, *supra*, provides further insight into such Congressional intent. As noted fully on pages 448-50 of the 1968 U.S. Code Cong. & Adm. News, the bill initially contained a provision directing the Secretary to provide transportation service on the Mall. When this provision was deleted by the House, the Secretary sought an amendment which would have provided that the operation of a transportation service on the Mall was under the "sole and exclusive regulation of the Secretary". The Congress, without any explanatory language in the legislative history, removed

such amendment and provided instead for the submission of a report, deemed entirely unnecessary by the Secretary on transportation conditions on the Mall. Such rejection surely represents not the dismissal of an unnecessary refinement but the continuation of a Congressional intent to include national park areas in the Metropolitan District within the jurisdiction of the Commission.

On pages 16 and 17 the Government poses the threat that the Secretary's administration of the national parks will be "thwarted" and "frustrated" by the Commission's exercise of jurisdiction over the Mall. Such threat would seem to be entirely unwarranted. As a practical matter, it is only reasonable to expect that two agencies exercising concurrent jurisdiction will establish a working relationship pervaded by a spirit of cooperation. It simply is in their own best interests to do so; for in the sense that the Commission can refuse to certificate a "concessioner" of the Secretary, the Secretary can refuse to allow a carrier certificated by the Commission to operate on parkland in the District. Under the circumstances, the Commission and the Secretary will doubtlessly give most careful and sympathetic consideration to each other's determination of a public need. Should such consideration result in a denial, judicial review is readily available to assure the reasonableness thereof.

On pages 20-21 it is comforting to note that at last the Government concedes that the ICC has limited jurisdiction over operations in national park areas. It is difficult to understand, however, why the Government suggests that it is not "appropriate" for the Commission, successor to the authority of the ICC in the Metropolitan District, to exercise similar jurisdiction. Contrary to the Government's suggestion, this is clearly not a Commission "effectively controlled by representatives of Maryland and Virginia". Under Article VI of the Compact (Pet. App. 15a), no action of the Commission relating to or affecting operations solely within the District of Columbia can be effective without the concurrence of the member representing the District.

The answer to the Government's query as to how the Commission could have been given greater authority than the ICC over national parks in the District is obvious; the Commission inherited not only the ICC's jurisdiction there-over but also that exercised by the PUC.

Finally, on page 22, the Government asks how the Franchise can be applicable to Universal's proposed operation but not to the competitive sightseeing operations conducted by the other respondents. Here again the answer is obvious; only Universal will operate its services "over a given route on a fixed schedule". While the services of the other respondents generally follow a particular route and schedule, they can vary same without approval. Universal, by contrast, must get the approval of the Secretary to make any such changes. Moreover, the Franchise was granted to Transit subject "to the rights to render service within the Washington Metropolitan Area possessed at the time . . . by other common carriers of passengers" (Section 1, Pet. App. 37a). The Mall sightseeing operations of all the other respondents were in existence prior to the grant of Transit's Franchise in 1956.

CONCLUSION

For the foregoing reasons, the order of the Court of Appeals of June 30, 1967 should be affirmed.

Respectfully submitted,

Manuel J. Davis
 Samuel M. Langerman
 1420 New York Avenue, N. W.
 Washington, D. C. 20005
 Attorneys for D. C. Transit
 System, Inc.

TO THE

AND

TO THE

(1915)

Act of Congress, approved March 3, 1907, entitled "An Act to provide for the collection of customs duties on imports of certain goods from the Philippines, and for other purposes."

Section 1. That the duties on imports of certain goods from the Philippines, and for other purposes, shall be collected in accordance with the provisions of this Act.

APPENDIX A
(STATUTES NOT PRINTED IN APPENDIX TO THE
BRIEF FOR PETITIONER)

ACTS RELATING TO JURISDICTION AND
AUTHORITY OF NATIONAL PARK SERVICE

Act of September 25, 1890, 26 Stat. 478, 16 U.S.C. § 43.

Sequoia National Park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities or wonders within said park, and their retention in their natural condition. * * *

Act of March 2, 1899, 30 Stat. 994, 16 U.S.C. § 92.

Mount Rainier National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the powers and duties enumerated in section 3 of this title, not inconsistent with this section, he shall make regulations providing for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition. * * *

Act of January 9, 1903, 32 Stat. 765, 16 U.S.C. § 142.

Wind Cave National Park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be to prescribe such rules and regulations and establish such service as he may deem necessary for the care and management of the same. * * *

Act of June 29, 1906, 34 Stat. 617, 16 U.S.C. § 112.

Mesa Verde National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the

duties and powers enumerated in section 3 of this title not inconsistent with this section, he shall establish such service as he may deem necessary for the care and management of the same. Such regulations shall provide specifically for the preservation from injury or spoliation of the ruins and other works and relics of prehistoric or primitive man within said park. * * *

Act of May 11, 1910, 36 Stat. 354, 16 U.S.C. § 162.

Glacier National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the powers and duties enumerated in section 3 of this title not inconsistent with this section, he shall make and publish such rules and regulations not inconsistent with the laws of the United States as he may deem necessary or proper for the care, protection, management, and improvement of the same, which regulations shall provide for the preservation of the park in a state of nature so far as is consistent with the purposes of section 161 of this title, and for the care and protection of the fish and game within the boundaries thereof. * * *

Act of August 8, 1953, 67 Stat. 495, 16 U.S.C. § 1b.

In order to facilitate the administration of the National Park System and miscellaneous areas administered in connection therewith, the Secretary of the Interior is authorized to carry out the following activities, and he may use applicable appropriations for the aforesaid system and miscellaneous areas for the following purposes:

Emergency assistance

1. Rendering of emergency rescue, fire fighting, and cooperative assistance to nearby law enforcement and fire prevention agencies and for related purposes outside of the National Park System and miscellaneous areas.

Utility facilities: erection and maintenance

2. The erection and maintenance of fire protection facilities, water lines, telephone lines, electric lines, and other utility facilities adjacent to any area of the said National

Park System and miscellaneous areas, where necessary, to provide service in such area.

Transportation of employees of Carlsbad Caverns National Park; rates

3. Transportation to and from work, outside of regular working hours, of employees of Carlsbad Caverns National Park, residing in or near the city of Carlsbad, New Mexico, such transportation to be between the park and the city, or intervening points, at reasonable rates to be determined by the Secretary of the Interior taking into consideration, among other factors, comparable rates charged by transportation companies in the locality for similar services, the amounts collected for such transportation to be credited to the appropriation current at the time payment is received: *Provided*, That if adequate transportation facilities are available, or shall be available by any common carrier, at reasonable rates, then and in that event the facilities contemplated by this paragraph shall not be offered.

Utility services for concessioners; reimbursement

4. Furnishing, on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System and miscellaneous areas: *Provided*, That reimbursements hereunder may be credited to the appropriation current at the time reimbursements are received . . .

Supplies and rental of equipment; reimbursement

5. Furnishing, on a reimbursement of appropriation basis, supplies, and the rental of equipment to persons and agencies that in cooperation with, and subject to the approval of, the Secretary of the Interior, render services or perform functions that facilitate or supplement the activities of the Department of the Interior in the administration of the National Park System and miscellaneous areas: *Provided*, That reimbursements

hereunder may be credited to the appropriation current at the time reimbursements are received.

**WASHINGTON METROPOLITAN AREA TRANSIT REGULATION
COMPACT, AS APPROVED BY ACT OF SEPTEMBER 15, 1960, 74
STAT. 1051, D.C. CODE (1967 ED.) §§ 1-1415 and 1416**

A. Consent Legislation

Sec. 6. Jurisdiction is hereby conferred (1) upon the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit, respectively, to review orders of the Washington Metropolitan Area Transit Commission as provided by section 17, article XII, title II, of the Washington Metropolitan Area Transit Regulation Compact, and (2) upon the United States district courts to enforce the provisions of said title II as provided in section 18, article XII, title II, of said Compact.

Sec. 7. (a) The right to alter, amend, or repeal this Act is hereby expressly reserved.

(b) The Washington Metropolitan Area Transit Commission shall submit to Congress copies of all periodic reports made by the Commission to the Governors, the Commissioners of the District of Columbia and/or the Legislatures of the compacting States.

(c) The Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Washington Metropolitan Area Transit Commission as is deemed appropriate by the Congress or any of its committees. Further, Congress or any of its committees shall have access to all books, records and papers of the Washington Metropolitan Area Transit Commission as well as the right of inspection of any facility use, owned, leased, regulated or under the control of said Commission.

OTHER ACTS

Act of March 3, 1925, 43 Stat. 1126, D.C. Code § 40-612

Nothing contained in this chapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this chapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443.

Act of February 27, 1931, 46 Stat. 1426, D.C. Code § 40-603(e)

(e) The commissioners may in the administration of this chapter, section or any provision of the Traffic Acts for the District, exercise any power or perform any duty conferred on them by this chapter through such officers and agents of the District as the commissioners may designate. The commissioners are further authorized and empowered to make, modify, repeal, and enforce reasonable rules and regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, and the establishment and location of hack stands: *Provided*, That the commissioners shall establish and locate parking areas in the vicinity of governmental establishments for use only by members of Congress and governmental officials when on official business: *Provided further*, That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in

this chapter, to regulate their schedules and their loading and unloading, to locate their stops, and all platforms and loading zones and to require the appropriate marking thereof, is vested in the Public Service Commission of the District of Columbia: *Provided further*, That whenever any order, rule, or regulation of the Public Service Commission shall be made relative to the routing of common carrier vehicles, to the location of their stops, to the establishment or change in location of platforms, loading zones, or other spaces on the public highway to be reserved for any purpose whatsoever, or to the appropriate marking thereof, or whenever any order, rule, or regulation of the District commissioners shall be made which affects such routing, stops, platforms, zones, or spaces, said order, rule, or regulation shall, prior to promulgation, be referred to a joint board to be composed of the commissioners of the District of Columbia and the members of the Public Service Commission, which is hereby authorized and created. Such joint board may, by the affirmative action of any three members thereof, adopt rules and regulations which, when promulgated, shall be binding and shall have the full force and effect of law, and the engineer commissioner shall have but one vote. Any of said rules and regulations, after reasonable trial and within a reasonable time, may be changed by the joint board upon the request of the commissioners of the District of Columbia or of the Public Service Commission.

Act of January 14, 1933, 47 Stat. 760, D.C. Code § 44-201

Competing lines—Certificates of convenience and necessity.

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Service Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public.

Act of August 9, 1935, 49 Stat. 543, Part II of the Interstate Commerce Act

Section 203(b)4, 49 U.S.C. § 303(b)4

(b) Nothing in this part, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;

Section 209(a)(1), 49 U.S.C. sec. 309(a)(1)

(a) (1) Except as otherwise provided in this section and in section 310a of this title, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce or any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business: * * *

• • • *Provided, further,* That nothing in this part shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national monument of the United States.

APPENDIX B

**PUBLIC UTILITIES COMMISSION OF
THE DISTRICT OF COLUMBIA**

Order No. 1623.

August 5, 1937.

IN THE MATTER OF

An investigation of the transportation requirements of the District of Columbia for all street railway and bus service and facilities of the CAPITAL TRANSIT COMPANY to determine route changes, extensions of service, abandonments, physical changes in facilities, locations of stops, safety zones, and loading platforms, and such other matters as may be pertinent in order that proper and adequate service may be provided by said company within the District of Columbia.

**P.U.C. No.
3085/178.**

Part 2.

**Abandonment and construction of tracks
in the vicinity of Four and One-Half Streets.**

**AMENDING ORDER NO. 1248 AND
CANCELLING ORDER NO. 1355**

IT IS ORDERED:

Section 1. That section (5) of Order No. 1248, as amended by Order No. 1355, be and it is further amended to read as follows:

(5) That the Capital Transit Company be and it is authorized and directed to operate buses over the following route:

From terminal on the south side of P Street, Southwest, east on P Street to 4th Street, north on 4th Street to Washington Drive, west on said drive to

9th Street, north on 9th Street to Pennsylvania Avenue, east on Pennsylvania Avenue to terminal east of 7th Street; from said terminal, east on Pennsylvania Avenue to 4th Street, south on 4th Street to O Street, west on O Street to Water Street, south on Water Street to P Street, east on P Street to terminal.

Section 2.. That terminals be established at the following locations:

South side of P Street, Southwest, beginning 32 ft. west of west curb line of 4th Street and extending west 90 ft.

South side of Pennsylvania Avenue, Northwest, beginning 30 ft. east of east curb line of 7th Street and extending east 60 ft.

Section 3. That Order No. 1355 be canceled.

Section 4. That this order take effect Sunday, August 15, 1937.

A TRUE COPY:

/s/ James L. Martin
Executive Secretary.

By the Commission

JAMES L. MARTIN,
Executive Secretary.

August 10, 1937.

In accordance with the provisions of the Act of Congress approved February 27, 1931, this order has been referred to the Joint Board created by the said Act and has been adopted by said Joint Board.

DAN I. SULTAN
Chairman of the Joint Board.

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SUPREME COURT, U. S.

FILED

JUL 8 1968

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [REDACTED]

19

UNIVERSAL INTERPRETIVE SHUTTLE
CORPORATION,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, *ET AL.*,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT COMMISSION

RUSSELL W. CUNNINGHAM
General Counsel
1815 North Fort Myer Drive
Arlington, Virginia 22209

Attorney for
Washington Metropolitan
Area Transit Commission

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 978

UNIVERSAL INTERPRETIVE SHUTTLE
CORPORATION,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT COMMISSION

This Brief consolidates the argument of the Commission to the brief of the petitioner and the amicus curiae memorandum of the United States.

QUESTIONS PRESENTED FOR REVIEW

1. Do the Petitioners Urge an Improper and Incorrect Interpretation of the Statutes Involved?
2. Is the Transportation Service To Be Provided by Universal "Transportation" Under the Compact?

3. Is the Transportation Service "by the Federal Government", and Therefore, Exempt from the Provisions of the Compact?

COUNTERSTATEMENT OF THE CASE

The proceedings in the courts below stem from an action instituted in the District Court by the Commission for an injunction and for declaratory relief to enjoin Universal from engaging in the transportation of passengers for hire in the Mall area of the District of Columbia, unless and until such transportation is authorized by a certificate of public convenience and necessity issued by the Commission.

The Commission is an instrumentality of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia, created by an interstate compact, the Washington Metropolitan Area Transit Regulation Company ("Compact"), between the aforementioned political jurisdictions. The Congress of the United States gave its approval to the District of Columbia to enter into such compact and consented thereto by Public Law 86-794, September 15, 1960, 74 Stat. 1031 (D.C. Code § 1410, 1961 Ed.), as amended. The purpose of the Compact was to create in one agency the regulation of the transportation of persons for hire in the Washington Metropolitan area, which was recognized by Congress as a single unified urban community. The Compact became effective March 22, 1961.

In the Fall of 1966, the Secretary of the Interior ("Secretary") instituted, on an experimental basis, a so-called "interpretive shuttle service" to transport passengers over public streets (App. 57) through the Mall area of the District of Columbia. Subsequently, the Secretary issued a prospectus soliciting proposals from various private interests to provide a similar service.

Universal, a California corporation, was selected to be the recipient of a contract to provide the service; the contract was thereupon negotiated between Universal and the Secretary, acting through his Director of National Parks.

Under the terms of the contract, Universal, called a concessionaire, is required to operate a transportation service along routes requested by the Park Service throughout the Mall area. It is further required to provide guides to give a narration to the passengers as the vehicles are in route. Additionally, Universal must station guides at designated points of interest throughout the Mall area. While there is no charge for the latter service, visitors utilizing the transportation service must pay Universal a fee for his guided transportation ride.

Washington Sightseeing Tours, Inc., Blue Lines, Inc., White House Sightseeing Corporation, and D. C. Transit System, Inc., intervened as parties-plaintiffs.

The United States was granted leave to file a representation of interest, to present evidence, file briefs, and otherwise take part in the proceeding.

The Commission's motion for preliminary injunction was consolidated with a hearing on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. The consolidated hearing was conducted on April 25 and 26, 1967.

The claims of the various parties in the District Court and the court of appeals may be succinctly summarized:

(a) *Commission.* The Commission asserted that the case was governed by the terms of the Compact; that the transportation service to be provided by Universal was transportation as that term is used in the Compact and that, therefore, Universal was subject to the provisions of the Compact, unless it could be shown that the transportation fell within one of the exemptions provided therein or unless some other statutory provisions removed the transportation service from the terms and applicability of the Compact. It further asserted that the National Park areas of the District of Columbia are within the geographical area¹ under which the Commission has jurisdiction. Further, that the transporta-

¹ Article I, Compact.

tion operations of Universal are not exempt by the terms of the Compact nor by any other statutory enactments of Congress; and that Universal may not engage in transportation for hire within the Metropolitan District unless and until that transportation service is authorized by a certificate of public convenience and necessity.

(b) *Certificated Carriers.* The intervenors adopted the Commission argument. D. C. Transit additionally asserted that the proposed service by Universal constitutes transportation of persons for hire on a scheduled service over a fixed route which will traverse portions of D. C. Transit's regular routes; that such services are derogatory of the protection afforded it not only by the Compact, but by the franchise granted to Transit by Congress, 70 Stat. 598 (September 8, 1956). All of the intervenors further adopted the principle that they would suffer a possible loss of revenue as a result of the proposed service. The Commission disavowed acceptance or reliance upon, for purposes of this suit, the economic injury or impairment of the Congressional franchise arguments, stating that these were matters which properly should be laid before it in a certificate-application proceeding.

(c) *Universal.* The primary argument raised by Universal was that it would not be engaged in "transportation" as that term is used in the Compact. It took the further position that in the event its transportation service would come within the purview of the Act, the transportation service was exempt because it was "by the Federal government". (Section 1(a) (2), Article XII)

(d) *The United States.* The Department of Justice represented that since the transportation service of Universal would be provided as a concessionaire to the National Park Service, the transportation was by the Federal government and therefore exempt from the jurisdiction of the Commission.

The District Court below found that the transportation services of Universal were not transportation under the Com-

compact and accordingly Universal was not subject to the Commission's jurisdiction. Moreover, *obiter dictum*, it stated that even if the transportation were subject to the provisions of the Compact, such transportation was "by the Federal government", and therefore exempt from Commission jurisdiction.

The petition for an injunction and for declaratory relief was denied.

Thereafter the Commission and the intervenors appealed to the District of Columbia Court of Appeals.

The Court of Appeals reversed, holding that:

"the various relevant statutory provisions, construed in relation one to the other, especially in view of the physical location of the Mall in the Metropolitan area of the District of Columbia do not afford authority to . . . Universal . . . validly to engage in such transportation for hire in the Mall area as is contemplated by the contract . . . without a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission authorizing such transportation. . . ."

SUMMARY OF ARGUMENT

I. This case is basically one of statutory interpretation. It involves two areas of legislative enactments by Congress—one conferring certain proprietary and supervisory powers upon the Secretary of the Interior with regard to National Park areas in the District of Columbia, and the other conferring plenary regulatory powers over transportation for hire in the District and its environs upon the Transit Commission. The two laws are not individually or mutually exclusive, but must be read together to reveal the true intent of the Congress, which was to confer dual jurisdiction over certain areas on the two agencies.

II. The various constructions of the Compact urged by petitioner, on the assumption it were applicable, are not only lacking in merit, they are harmful and mischievous in that

they would emasculate the Commission's ability to deal effectively with transportation problems in the Washington area. Thus, the Commission's interest and powers are not limited to "interstate" transportation or "commuter" transportation or "mass" transportation but to all transportation for hire in the Washington area. Further, not only is the proposed role of Universal not "transportation by the Federal Government", to hold otherwise would open the door to such widespread avoidance of the Commission's jurisdiction as to destroy its power to achieve the unified and coordinated regulation which is the objective of the Compact. Finally, the transportation involved is obviously transportation "between points" as stated in the Compact.

ARGUMENT

A reading of the briefs of petitioner and the United States creates the impression that the central question involved in this case is the preservation of the power of the Secretary of the Interior to deal effectively with problems arising in park areas of the District of Columbia. The Commission submits that this is not the central issue and that, indeed, affirming the court of appeals will have little impact on the Secretary's ability to discharge his responsibilities effectively.

Rather, the central issue in this case is preserving the intent of Congress, and of the two state legislatures of Maryland and Virginia, to have a unified and coordinated system of transit regulation in the Washington Metropolitan area. Prior to enactment of the Compact, there existed a hodge-podge of transit systems without unified direction and control. Congress sought to correct that undesirable situation by enacting clear statutory language to create a new agency, the Transit Commission, with the requisite powers to regulate all transportation for hire in the area. Petitioner and the Secretary now contend that they can, without any regard to the provisions of the Compact, establish a major transportation system, designed, by their own admission, to serve tens of millions of riders annual in the

very heart of the city itself. Despite their glib claims to the contrary, the existence of such a major transportation unit in the heart of Washington would unquestionably have a substantial impact upon the carriers and the problems with which the Transit Commission has to deal. Petitioner's argument creates the possibility of one major transit system subject to the jurisdiction and control of the Commission sharing the streets with another major system which can simply ignore the Commission's attempts to achieve coordinated transportation. This is a prospect which the Court should not accept unless the statutes involved clearly so require.

In their zeal to escape the Commission's jurisdiction, the petitioner and the Secretary do not simply attempt to downgrade the stature and intent of the Compact, they urge interpretations of its language which are so twisted and mischievous that, if accepted, they could seriously damage, or even destroy, the Commission's ability to deal with the problems which come before it.

Petitioner's position is doubly unfortunate because, as a practical matter, it is truly unnecessary. The Commission has made it clear from the outset that its assertion of jurisdiction is not meant to oust the Secretary from his legitimate powers over park areas. The Secretary would remain free to determine that bus service is needed on the Mall and it is difficult to conceive that that determination would, or could, be ignored by the Commission. Certainly, any action by the Commission in this regard is subject to review by the courts. The Secretary would be free to choose a concessionaire and impose any contractual obligations upon him he sees fit. True, the concessionaire would also have to comply with the obligations imposed upon him by the Compact but these obligations are entirely compatible with the objectives of the Secretary and create no real possibility of conflict with the Secretary's powers or objectives. The Government's claim (Memorandum for U.S., p. 17) that the Commission would invade areas outside the area of its legitimate concern and seek to frustrate the Secretary's aims is

not only a fevered and unworthy contention to make concerning another governmental body, it is indicative of the somewhat unreal basis underlying the Secretary's opposition to the Commission's jurisdiction.

The central issue in this case, then, is the potential harm to unified cohesive regulation of transportation in Washington and environs which could result from acceptance of the petitioner's arguments. We should now examine the language of the pertinent statutes, and their legislative history, to see if this result is required.

I

PETITIONERS URGE AN IMPROPER AND INCORRECT INTERPRETATION OF THE STATUTES INVOLVED

There were three salient questions resolved by the court of appeals. First, that the transportation service of Universal came within the meaning of the Compact. Secondly, no provision in the Compact exempts that transportation service from the Commission's jurisdiction. Thirdly, the transportation service is not removed from the Commission's jurisdiction by any other Congressional law.

This case involves a straightforward matter of statutory interpretation. There is, on the one hand, the Compact which contains broad language conferring plenary powers on the Commission over transportation for hire in the Metropolitan District. There are, on the other hand, a range of statutes which confer certain plenary jurisdiction upon the Secretary over the administration of the National Park System. It is the Commission's position that this case involves acts of Congress of equal dignity and importance. The opinion of the court of appeals holds that each must be read to form a harmonious whole. Universal prefers to turn the Compact into an attempt at usurpation of federal power by the states and thereby deprive it of its status as an act of Congress.

Ignoring the fact that one of the signatories was the District of Columbia, beyond question a creature of the Federal Government, and further ignoring that Congress carefully reviewed the entire terms of the Compact and passed a specific act authorizing its creature, the District Government, to enter into it, Universal and the Government argue that other Federal statutes, concerning the Secretary's powers, must alone be considered as determining the question at issue. The provisions of the Compact supposedly cannot impinge upon these statutory provisions. This is a wholly unacceptable point of view. The Compact must be regarded as reflecting the will of Congress, just as any other Congressional enactment does.

We turn now to a general consideration of the language of these Acts. There is nothing in the statutes spelling out the Secretary's powers which specifically deals with the provisions of the Company. The real question is: what is the relationship between those powers of the Secretary and the powers conferred upon the Commission? The language of the Compact, and its legislative history, provide an answer to that question. The Compact specifically preserves the "normal and ordinary police powers . . . of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities." Compact, Article XII, Section 3.

Does this confer upon the Secretary the exclusive jurisdiction he claims in this proceeding? It would seem not. The Secretary specifically requested that this language be changed to reflect the broader powers he claims and Congress did not act upon his request. Thus, the Secretary of the Interior objected to the language in the proposed consent legislation restricting his jurisdiction over transportation in the Metropolitan area to "normal and ordinary police powers." In his letter the Secretary stated as follows:

The proviso beginning on line 5, page 51, purports to save the ordinary police powers of the signatories and the Director of the National Park Service with

respect to the regulation of vehicles, control of traffic, and care of street, highway, and other vehicular facilities. Since "police powers" is not a term descriptive of the authority and responsibilities of the Director of the National Park Service, we recommend the following clarifying amendments:

On page 51, lines 8 and 9, delete "and of the Director of the National Park Service."

On page 51, line 11, after the colon insert "Provided further, That nothing in this Act or in the compact shall affect the authority and responsibility of the Secretary of the Interior pursuant to section 3 of the Act of August 25, 1916 (39 Stat. 535), as amended, and other Acts of Congress controlling the development and use of national parks, monuments, and reservations comprising the National Park System."

H. Rep. No. 1621, p. 49.

The recommended clarifying amendments were rejected by the Congress.

Universal tries to brush this fact aside as being at least as consistent with its position as with the Commission's.² This attempt to avoid the damaging legislative history is woefully weak.

First, it ignores the fact that Congress had enacted the exemption now claimed by the Secretary in the Interstate Commerce Act, an act which controlled the Commission's predecessor regulator of interstate transportation in the Metropolitan District. Yet, it did not carry that exemption

²Petitioner asserts that the Commission seeks to use Congressional silence as assent. This ignores the posture in which this question arises. It is petitioner which urges that the language of the Compact concerning the police powers of the Secretary preserved the Secretary's exclusive jurisdiction untrammelled. The Commission simply replies that the Secretary sought to spell this out in the Compact and was unsuccessful. In this setting, the failure of Congress to adopt the Secretary's language is more convincing evidence that the Commission was intended to have certain jurisdiction in the Mall area than the contrary.

forward into the Compact.³ Secondly, it ignores the established and unquestioned powers of another of the Commission's predecessor regulators. It is asserted by Universal that the D. C. Public Service Commission never claimed jurisdiction over public transportation in the National Park areas of the District. This was not so prior to the Compact and is not so today. The D. C. Public Service Commission has always set fares and regulated practices for taxicabs (and for buses, when it regulated them) which operate in National Park areas. The Mall area is included on the D. C. taxicab zone map and it has never been questioned that the D. C. Public Service Commission can set fares in that area. Moreover, the D. C. Public Service Commission, like this Commission since it assumed jurisdiction, consistently authorized bus routes which operate over and through National Park Service areas. The Public Service Commission, like this Commission, has recognized the Secretary's power to exclude vehicles of public transportation from park areas, or to regulate the conditions of use. But the Public Service Commission has also exercised its own jurisdiction to regulate transportation in those areas. The Secretary's claim of "exclusive" jurisdiction must be treated in the light of this history and practice.

Petitioner asserts that the prior regulation by the Public Service Commission and the Commission involved transportation primarily off of park lands, and such regulation of transportation on park roads was merely at the sufferance of the Secretary. So, it is claimed, he is free to oust that service on park roads at his whim or caprice. Assuming the latter is true, this does not equate to excusing the service on the park streets, *if operated*, from the jurisdiction of the

³Other exemptions also were not carried forward into the Compact. Some examples: vehicles owned by hotels used to transport hotel patrons between hotels and local rail or carrier stations, § 203(b)(3); incidental to air, § 203(b)(7a); commercial zone, § 203(b)(8); and casual transportation, § 203(b)(9); 49 U.S.C.

Commission, i.e., the necessity for a certificate of public convenience and necessity from the Commission.

We have never asserted that the Secretary could not close a street to bus service—that is the prerogative of any of the political jurisdictions in the Metropolitan District, under their “normal and ordinary” police powers. We do say that if bus or tram service is to be operated, it must be authorized by the Commission.

The Public Service Commission and the Commission did not have the jurisdiction they have exercised over transportation on the Mall *conferred* upon them by the whim or acquiescence of the Secretary. Not even he would claim such power. No, that jurisdiction was *conferred* by Acts of Congress. It is true that the Secretary has certain powers conferred upon him and in some instances his power may override the power conferred upon the regulatory commissions. This cannot, however, obscure the fact that the Public Service Commission had power, and still has power, over certain aspects of transportation on the Mall and that certain aspects of that power have passed to the Commission.

Petitioner continues its argument by claiming that the Compact does not contain any express provision granting regulatory power over park lands. Moreover, it claims, Congress did not confer any powers upon the Commission not possessed by its predecessors. The short answer to this allegation is that no particular plot of ground was singled out, because the entire Metropolitan area was encompassed within the Commission's geographical jurisdiction. Why should park lands have been singled out for special or preferred treatment? The Pentagon was not, nor the White House and the Capitol; no city, county, or state property. Moreover, petitioner confuses the word “power” with “jurisdiction”. To be sure, our predecessors were limited—as are we—to “regulatory” powers. We have previously pointed out where certain transportation excluded from the *jurisdiction* of the Interstate Commerce Commission was not

excluded from our jurisdiction. See footnote 3, p. 11, *supra*. And this was drawn to the attention of Congress. For example, much of the local interstate transportation was exempt from regulation prior to the enactment of the Compact.

"So far as the metropolitan area is concerned, however, an important part of the area transit is not subject to regulatory control by virtue of the commercial zone exemption. Such a situation clearly mitigates against the development of unified and coordinated transit service within the metropolitan area. *This is one of the major deficiencies in the existing regulation of transit in the metropolitan area and one which the compact is designed to eliminate.*" Hearings on H.J. Res. 402 Before Subcommittee No. 3, House Committee on Jud., 86th Cong., 1st Sess., Pt. 1, p. 198 (1959). And see, H.R. Rep. No. 1621, 86th Cong., 2d Sess. 6 (1960) (hereinafter cited as H. Rep. No. 1621). (Emphasis added.)

It should be pointed out that the portions of the debate from the legislative hearings cited by petitioner in its Brief, pp. 28-29, relating to "powers" are, we believe, taken out of context and their purport mischaracterized. The Tuck-Fenwick dialogue arose over the question as to whether the Commission was being given "powers" beyond the "regulatory" concept; that is, would the agency have the power to tax or to control labor.

This brings us to another of the incorrect characterizations set forth by the petitioner. The Commission is not seeking, in this proceeding, to usurp any of the functions or powers of the Secretary.

Petitioner poses one salient question: If the Commission were to be omnipotent in the regulatory field, why weren't the laws of the Secretary specifically suspended along with the States' and ICC laws? The simple answer to this contention is that the Secretary was obviously not considered to be a transportation regulator. It would certainly be irrational for the Congress, in suspending applicable Federal laws, to

list every Department or agency head and decree that his "regulatory" powers over transportation was being suspended. In short, no one in or out of Congress, including the Secretary of Interior, envisaged that office as being endowed with economic regulatory powers over transportation.

The Commission does not assert exclusive jurisdiction over the transportation involved here. Moreover, it should be clearly understood that the Commission is not seeking by this suit to block the proposed service. Rather, it is the Commission's position that this is one of many situations in government where dual jurisdiction exists. The Secretary may exercise the powers spelled out in the petition to enter into a contract with a concessionaire. He may impose whatever conditions he sees fit. The Commission asserts, however, that before the concessionaire can operate pursuant to that contract, the concessionaire must comply with the Compact. This means, first, that he must obtain a certificate of convenience and necessity. It can only be assumed that in passing on that question, the Commission will be guided by that spirit of comity which should prevail when dual jurisdiction exists. It seems inconceivable that the Commission would not weigh heavily and carefully the Secretary's assessment of the need for the service. Moreover, any abuse of discretion by the Commission in this regard can be reviewed by the courts. Similarly, that same spirit of comity should operate to avoid, or ameliorate, any problems that might arise in operating pursuant to the contract between the Secretary and his concessionaire. The opinion of the court of appeals clearly recognizes this comity concept.

The reliance upon 16 U.S.C. § 20 et seq., to supplant the regulatory jurisdiction of the Commission is misplaced. Those statutory provisions were enacted in 1965, five years after the Congressional approval of the Compact. They are obviously intended to have nationwide applicability, except, where Congress has previously committed itself to the con-

trary in the Washington Metropolitan area. The concept of Congress acting to strike down state boundaries, yet retaining a jurisdictional barrier around the Mall, for transportation regulatory purposes, is patently ridiculous.

The petitioner further asserts that the position of the Commission would permit regulatory control of United States land by representatives from two states. A similar argument was raised in the Congressional hearings on the Compact, where it was asserted that the three-state agreement would permit the sharing of jurisdiction over transportation solely within the District of Columbia, and thus violate the "exclusive" aspect of the District of Columbia clause of the Constitution.

Congress declined to accept the argument, by noting the safeguards in the Compact, and proclaimed that "These safeguards assure and preserve Federal control over transit in the District of Columbia and effectively prevent the States of Maryland and Virginia from interfering with or embarrassing the Federal Government in its operations at the seat of government." Senate Report No. 1906, accompanying H.J. Res. 401, p. 31 (August 23, 1960). Moreover, in the Preamble to H.J. Res. 401, wherein consent to the Compact was given, Congress said that the Compact "adequately protects the national interest . . . and properly accommodates the National and State interests. . . ."

To sum up, the court of appeals had before it a series of statutes which spell out the Secretary's powers over the National Park areas of the District of Columbia. It also had before it the Compact, which spells out the Commission's powers over public transportation in the Metropolitan District. The statutes on the Secretary's powers do not contain any specific language concerning the Commission's powers. The Compact, on the other hand, does deal with the Secretary's powers. The language used, and its legislative history, does not support the Secretary's claim of exclusive jurisdiction. Nor is this claim supported by the practices of the Commission's predecessor as regulator of public transporta-

tion in the District of Columbia. In these circumstances, the preferable way in which to resolve the question of statutory interpretation is the way suggested by the Commission and adopted by the court of appeals. Dual jurisdiction exists. The Secretary may exercise the powers conferred upon him, but his concessionaire must also comply with the provisions of the Compact. Any possible conflicts arising from this dual jurisdiction will be avoided by the exercise of understanding by each government agency involved and comity, with the courts available to arbitrate any irreconcilable disputes. In this way, the Commission will not be completely excluded while a major unit is added to the system of public transportation in the area in which it is directed to achieve a rational, coordinated public transportation system serving the needs of all.

The United States contends that it was error for the Court of Appeals to declare that the Mall area is within the geographical jurisdiction of the Commission (Memorandum, p. 9), although it admits that "[t]echnically, of course, the national park areas in question are within the Metropolitan District. . . ." This assertion criticizes the Court for giving a "literal" application to the language of the Compact. This is impertinent sophistry; for the Court of Appeals stated that it considered the various relevant statutory words as "construed in relation one to the other." It was, obviously, seeking an interpretation of various acts of Congress which would provide a harmonious result.

**UNIVERSAL'S SERVICE IS WITHIN THE MEANING OF
THE COMPACT AND THEREFORE THE AMBIT OF THE
COMMISSION'S JURISDICTION**

A. Universal's Service Is Transportation

Section 1(a) of Article XII of the Compact states:

This Act shall apply to the *transportation* for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except . . . (Emphasis supplied)

1. The language of Section 1(a) is clear and unambiguous. Nevertheless, Universal argues that the term transportation as used in Section 1(a) means "mass transit", and does not apply to all other forms of transportation, including contract, charter, sightseeing and other forms of special operations. To make such a determination is to ignore that:

(a) Previous regulation by the Commission's predecessor agencies included charter, sightseeing, contract and other special forms of transportation. Indeed, as conceded by Universal and the United States before the courts below, the District of Columbia Public Service Commission still has jurisdiction to regulate bus fares in the Mall area. Since the jurisdiction of the District of Columbia Public Service Commission to regulate bus fares was transferred by the Compact to the Commission, the latter thus has jurisdiction to regulate the transportation of Universal.

(b) The administrative practice of the Commission has included regulation of such forms of transportation.

(c) The courts of appeals for both the District of Columbia and the Fourth Circuit have recognized the Commission's

⁴See certificates of public convenience and necessity attached to WMATC Exhibit No. 3.

jurisdiction over such non-mass transit forms of transportation. The District of Columbia court of appeals said in *Bartsch v. WMATC*, 120 U.S. App. D.C. 107, 344 F.2d 201 (1965), that:

"[t]he Transit Commission, by virtue of a Compact entered into among Virginia, Maryland, and the District of Columbia, has broad jurisdiction over commercial transportation carried on in the Washington area. . ."

Further, in *D. C. Transit v. WMATC*, ___ U.S. App. D.C. ___, 376 F.2d 765 (March 7, 1967), Judge McGowan wrote:

"When Congress consented to the Compact in 1960, it elected to treat the Metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity.

Obviously, the term "transportation" cannot be so narrowly construed as to mean only "mass transit or commuter service," but must be given its normal and ordinary meaning, which would embrace all forms of transportation, whether regular or irregular route, mass transit or special, charter, and pleasure tours. Moreover, such a construction is consistent with Congress' mandate that "[i]n accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof." Article XI, Compact. "The Act [Interstate Commerce] is remedial and to be construed liberally." *Piedmont & Northern Ry. v. Commission*, 286 U.S. 299, 211. See further, *Tcherepnin v. Knight*, 88 S. Ct. 548, 553.

"There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States v. American Trucking Associations*, 310 U.S. 534, at 543.

We do not need to search aimlessly through the Compact or the consent legislation to find the legislative intent. The Senate Report on the legislation states: "Title II of the compact provides the regulatory law which is to be administered by the Commission. . . . *Section 1 defines the scope of the compact and the transportation covered.*" (Emphasis supplied)

The key word in Section 1(a) is "transportation". The term "transportation" should be given its ordinary meaning unless otherwise defined or its literal meaning would lead to absurd results or *plainly* at a variance with the policy of the legislation as a whole.

The term "transportation" is not defined. However, it appears repeatedly throughout Title II and, from the various areas that it is used, can only be construed as having the widest of meanings, embracing all forms of movement of passengers except those enumerated as exemptions in Section 1(a)(1)-(5), (b), and the partial exemption in (c).

Furthermore, the basic function that Universal is to perform is the movement of people in vehicles between points in and around the Mall area. That the transportation is to be supplemented by a lecture of "interpretation" of the Mall area does not change the transportation service or mean that transportation is not to be rendered.⁵ Every sightseeing carrier regulated by the Commission renders a lecture service in conjunction with their tours (App. 55). Moreover, every single applicant for the contract was either a transportation company or experienced in performing a transportation service (App. 39). In fact, most of them hold certificates from the Commission.

Universal's theory, if adopted, will undermine the regulatory scheme adopted by the legislatures, and turn the

⁵The concept that the movement of people is "incidental" to a lecture would, if adopted, be applicable to the Interstate Commerce Act and perhaps even the Civil Aeronautics Act. Presumably a widespread invasion of the charter and sightseeing industry could and would occur.

transportation field into absolute chaos. There are many types of transportation requiring regulation which do not fall into the category of "commuter" or "mass" transportation. Many of these not only require regulation considered alone, they can have an impact on so-called mass transportation. To adopt petitioner's argument would open the door to operators of any type of transportation other than "mass" or "commuter" transportation to ignore the Commission's authority.

2. Next, Universal contends that because the transportation in question is to be performed on the Mall, it is not covered by the Compact.

The political boundaries between the states which were discarded by the enactment of the Compact would thus be planted around property owned by the Federal government. While the Commission is charged with the alleviation of traffic congestion (Article II), the very heart of the area would be taken out of its hands, and henceforth any service operated in or through the Mall area deemed to be required by the public convenience and necessity would be subject only to the "sufferance" of the Secretary of Interior. This is contrary to the legislative declaration of Congress that the metropolitan area of Washington should be treated as a geographical unit, with the Commission as the central licensing and rate-making authority.

The Federal enclave in the District of Columbia *is not an isolated area* such as Yellowstone National Park. The court of appeals stressed this fact. Congress recognized this, by refusing to alter its consent legislation as requested by the Secretary (see *supra*, p.), by not excluding such areas from the defined geographical area of jurisdiction of the Commission, by eliminating the exemption that exists in the Interstate Commerce Act, and by declaring that the Metropolitan Washington area is a single, unified urban community.

3. The legislative history of the Act is directly contrary to the assertions and conclusions of Universal and the United States.

The House Committee on the Judiciary, Subcommittee No. 3, held extensive hearings concerning the proposed Compact. One of the prime architects, Jerome Alper, Esquire, prepared for the National Planning Committee a comprehensive report on "Transit Regulations for the Metropolitan Area of Washington, D. C." In that report he pointed out what the jurisdiction of the Transit Commission would be under the act. In part he stated:

"This commission would have *exclusive jurisdiction* over the movement of passengers for a charge between *any* points in the district by motor carrier or street railway. Both contract and common carriers performing such transportation would also be subject to the jurisdiction of the compact commission. * * * *Sightseeing or charter service within the metropolitan district performed by a carrier engaged in transportation subject to the compact law would also be subject to the jurisdiction of the compact commission.* School buses and motor carriers operated by the federal government, the signatory States, or any political subdivision thereof, and any transportation by water would be exempt from the jurisdiction of the compact commission. Taxicabs would be subject to the jurisdiction of the compact commission only for interstate rate-making purposes. (Emphasis supplied)

Hearings before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, Eighty-Sixth Congress, First Session, p. 81.

Thus sightseeing and charter service performed anywhere in the Metropolitan District is "transportation" under the Compact.

Petitioner claims that the primary purpose of its service is not "transportation" but the interpretation of the national shrines on the Mall. Transporting twelve million—twelve

million-people is only an incidental thing. Nevertheless, a fleet of buses to handle this mass of riders must be put on the streets within the very heart of the city. Yet, it is contended that the Commission is concerned by law only with "municipal" problems. Municipal problems, it is said, do not include the movement of twelve million people within the very heart of this "unified, urban city." It is inconceivable that this was the intent of Congress.

B. The Transportation To Be Provided by Universal Is Not "Transportation by the Federal Government". To Hold Otherwise Would Dangerously Weaken the Compact

Article XII, Section 1(a) states that the Compact shall apply to the "transportation for hire by any carrier of persons between any points in the metropolitan district and to the *persons engaged in* rendering or performing such transportation service" except, *inter alia*, "transportation by the Federal government, the signatories hereto, or any political subdivision thereof." (Emphasis supplied)

It is submitted that there is no precedent extant for the proposition that a carrier of persons pursuant to a contract with the Government is thus considered to be performing transportation by the Government. Indeed, the contrary position has been taken both by the Interstate Commerce Commission and the Federal Courts.

The Interstate Commerce Commission has consistently held that a carrier performing transportation service under contract with the Federal Government must, nevertheless, be the holder of a valid certificate of public convenience and necessity issued by the Commission. In the case of *A. B. & W. Transit Company Extension of Operations - Washington National Airport*, 30 M.C.C. 618, a carrier providing service to Washington National Airport under contract with the Administrator of Civil Aeronautics nevertheless applied for a certificate of public convenience and necessity from the

Interstate Commerce Commission. *A. B. & W. Transit Company Ext. - Dulles International Airport*, 88 M.C.C. 175, involved the rendition of common carrier service to Dulles Airport. The administrator of the Federal Aviation Agency intervened to request that any certificates granted be conditioned on observance of its rules, regulations and requirements. He conceded, however, that section 206(a)(1) of the Act made it mandatory that the carrier with which it might contract for the proposed service must hold certificates of public convenience and necessity issued by the Commission.

The present F.A.A. ground transportation concessionaire at Washington National and Dulles Airports performs that transportation pursuant to a certificate from the Commission.

Likewise, this same issue was raised by a defendant common carrier in *U.S.A.C. Transport, Inc. v. United States*, 203 F.2d 878 (10th Cir. 1953), cert. denied, 345 U.S. 997 (1953). That carrier attempted to avoid criminal prosecution by alleging as one of its defenses that it was providing transportation for the U.S. Government and, therefore, a certificate of public convenience and necessity was not required. The Tenth Circuit Court of Appeals rejected that defense stating at pages 878-79:

"The defense that the required certificate is not necessary where a common carrier transports property for the United States Government is not well taken. Section 306 of the Act provides that it is a violation for a common carrier to engage in interstate commerce on the public highways without possessing a certificate of public convenience and necessity from the Commission. A common carrier transporting goods for the United States Government for hire from one state to another is still a common carrier, engaged in interstate transportation, to the same extent as when thus transporting goods for a private individual. Of course, if the Government itself transports its own goods, it need not have the required

certificate because it is not subject to the provisions of its own laws. That is the principle laid down in *Dollar Savings Bank v. United States*, 19 Wall. 227, 86 U.S. 227, 22 L. Ed. 80 and *United States v. Knight*, 14 Pet. 301; 39 U.S. 301 [Reprint 251], 10 L. Ed. 465, upon which appellant relies. But these decisions do not support the contention that a common carrier, carrying goods in interstate commerce, under contract with the Government, need not comply with the law with respect to the possession of the required certificate. The only case which seems to have passed upon the question is *United States v. Schupper Motor Lines*, D. C. 77 F. Supp. 737. It held squarely that a certificate of convenience and necessity was required by a common carrier carrying goods in interstate commerce for the Government. It is also worthy of note that Subsection (b) of Section 303, 49 U.S.C.A., which sets out specifically and in detail the vehicles exempted from the operation of the act, makes no reference to vehicles by common carriers while engaged in transporting goods for the Government." (Emphasis supplied)

Thus, *Dollar* lays down the principle that "transportation by the government" does not include service performed by a private operator under contract with the Government.

There is nothing in the legislative history of the Compact which alters the doctrine that a common carrier performing service for the government under contract must nevertheless be certified by the appropriate regulatory agency:

If the mere existence of a contract between a carrier and a signatory is sufficient to exempt the transportation service from regulation by the Commission, the result could cause irreparable damage to the objectives sought by the Compact. The exemption in question does not apply only to the Federal government, but to all signatories and their political subdivisions. Any county or town in the area would thus be free to set up a transportation system anywhere within the Washington Metropolitan area simply by engaging the services of a carrier under contract. The counties and cities

could embark upon their own transportation ventures including *regular route operations* serving the general public both outside and within their political boundaries. The large number of Federal agencies which ordinarily issue contracts involving transportation could do so with carriers who would not be required to submit themselves to the uniform regulations of the Commission. None of these operations would be subject to Commission jurisdiction. The Commission, therefore, would be faced with the prospect of attempting to regulate public transportation while competing, unregulated carriers are utilizing the same streets. The result would mean total defeat of the unified system of transportation envisioned by the enactment of the Compact. It was precisely to avoid this narrow, parochial approach and to regulate transportation on an area-wide basis that the Compact was created.

The experimental operation by the Secretary in the Fall of 1966, performed in his own vehicles and operated by his own personnel, is an example of transportation by the government, and meets the *Dollar* principle.

Here, however, the facts are further from *Dollar* than those in *U.S.A.C.*, for there the carrier was performing his services for the government. Here Universal is performing its service for the general public. Its voluntary acquiescence to the supervision of the Secretary—for a valuable concession privilege—does not alter the character of the service, which is that of a common carrier engaged in transporting the public for hire. The evidence clearly reveals that the service will be in Universal's vehicles, operated by Universal's employees, for a fare collected by Universal.

It should be noted that the contract between Universal and the Secretary states:

"Whereas, the United States has not provided such necessary facilities and services and desires the Concessioner to establish and operate the same at rea-

sonable rates under the supervision⁶ and regulation⁷ of the Secretary; . . . " (App. 68)

This demonstrates the unsoundness of the argument, by disclosing that even petitioner's evidence fails to support such a rationale, for it is apparent that Universal is to "establish and operate" the transportation.

The principal case relied upon by Universal is simply not in point, for in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), the contractor was performing his service for the government. The principle enunciated therein dealt solely with a question of agency law arising from a suit for damages to a third party. It has no application here.

The broad application urged to be given the exemption proviso is contrary to the well-accepted principle stated in *Piedmont & Northern Ry. v. Commission*, *supra*, 311:

"As the Act is remedial and to be construed liberally, the proviso defining exemptions is to be read in harmony with the purpose of the measure and held to extend only to carriers plainly within its terms."

Universal and the Government urge this Court to reverse the applicability of these two cardinal legal principles, by giving a narrow construction to the purpose of the Compact and a broad brush interpretation of the exemption.

In fact, their theory of this case is predicated on strained interpretations of the language of the Compact—interpretations which would emasculate the meaning and purpose of the act. The intent of the legislative bodies of the Federal government and the States to create a law which would improve public transportation and alleviate traffic congestion on a coordinated basis would be frustrated by the artificial boundary raised by the Secretary of the Interior around park lands—land not restricted to the Mall area, but lands astride many of the major arterial streets in the Washington Metropolitan area.

⁶The function of the Secretary.

⁷The function of the Commission.

The aims and ideals of so many far-seeing and dedicated public officials and private citizens embodied in the Compact warrant a better fate than that which would result from adoption of the theories espoused by the petitioner.

C. Universal Improperly and Erroneously Claims That Its Transportation Will Not Be Between any Points in the Metropolitan District

Universal contends that its service will not be operated "between any points" (Article XII, Sec. 1(a), but only from and to one point; therefore, its transportation is not within the ambit of the jurisdiction of the Commission. It then asserts that "this very significant fact" was overlooked by the Court of Appeals.

In the first place, counsel for the Commission is unable to find any reference to such a contention in Universal's brief to the Court of Appeals. Hence, it may not raise the point before this Court.

Moreover, the argument is absurd. The contract lists numerous points at which its service will touch in order that the history and other items of interest may be discussed. Further, it admits that the contract contemplates that it may provide a service whereby passengers may commence the tour, proceed to a "point of interest, *debar*k, remain at that point of interest" and later continue his tour on another vehicle (Pet. Brief, p. 11). (Emphasis added) This is contrary to its argument on page 41 of its Brief.

Nor does the law say that "between any points" means two or more separate and distinct points. The movement between origin and destination constitutes transportation between points, whether the physical location of the points, are at the same or different geographical locations.

III

**THE APPLICABILITY OF THE D. C. TRANSIT FRANCHISE
IS NOT BEFORE THIS COURT**

The Court of Appeals did not discuss the contention of D. C. Transit, that its Congressional Franchise protects it from competition above and beyond the provisions of the Compact. Universal admits that the court of appeals did not pass upon this issue (Petitioner's Brief, p. 45).

The Commission, as it did below, neither endorses nor rejects D. C. Transit's position. Accordingly, it offers no argument on this point; moreover, it respectfully suggests that the Court should not entertain argument on this point.

CONCLUSION

The entire theme underlying the argument of the United States is the theoretical National-city cleavage between the Mall as a national shrine and the Mall as a part of the city of Washington. It presupposes that only a Cabinet officer can protect the former and that a state regulatory commission (in which category the Commission is erroneously placed) should not aspire beyond the latter.

Congress felt no such fear, nor did it adopt the cleavage concept. The converse is true. The evils Congress was trying to cure—i.e., the elimination of the fragmentation of the Washington metropolitan area occasioned by the various political divisions—could not be cured by excluding land owned by the United States.

The inescapable conclusion to be drawn from the peculiar relation between some of the Mall streets and the mass transportation complex in the Metropolitan area is that transportation on those streets is inextricably intertwined with transportation of the public generally and it is inconceivable that Congress would exclude them from the jurisdiction of the Commission.

The Compact is not a limitation upon the jurisdiction of the Secretary of the Interior—it merely imposes additional requirements upon a person about to engage in the transportation of persons for hire in the Washington Metropolitan District.

The court of appeals' opinion will preserve the dual relationship between the Compact and the laws defining the Secretary's power for their respective responsibilities are not antagonistic. In fact, accommodation and cooperation are, their aim. Regulation by the Commission of a common carrier service performed in whole or in part over public streets owned by the Federal government and controlled by an agency thereof does not conflict with the internal control of the facilities by that agency since it retains its jurisdiction to maintain its control. This, in fact, has been the practice for years. Carriers desiring to operate over streets in the Parks area have sought operating authority from the Commission and permits from the Park Service.

There is nothing improper or illogical for two agencies of the government independently to exercise dominion over different facets of a particular program. Moreover, the public interest is best served by the defined dual roles of joint authorization in this area.

Congress has clearly voiced its intent that the transportation to be engaged in by Universal is subject to the provisions of the Compact. Neither Universal nor the United States has shown any substantial reason why the opinion of the court of appeals should be reversed.

Quite obviously, the issue is restricted to a local controversy, which has arisen out of the control of the Congress over the Nation's capital and its park areas therein. The problem has no relationship to the national park lands throughout the rest of this country, for nowhere else has Congress been confronted with this uniqueness and if no other legislation has Congress acted to establish the duality of jurisdiction which it obviously intended to establish in Washington, D. C.

The opinion and order of the court of appeals must be affirmed.

Respectfully submitted,

RUSSELL W. CUNNINGHAM

General Counsel

Attorney

July, 1968.

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FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 19

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION

v.

Petitioner,

WASHINGTON METROPOLITAN AREA TRANSIT
COMMISSION, ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

JEFFREY L. NAGIN

ALLEN E. SUSMAN

9601 Wilshire Boulevard
Beverly Hills, California 90210

RALPH S. CUNNINGHAM, JR.

THOMAS P. MEEHAN

1815 H Street, N. W.
Washington, D. C. 20006

Of Counsel:

Attorneys for Petitioner

ROSENFELD, MEYER & SUSMAN

9601 Wilshire Boulevard
Beverly Hills,
California 90210

ARENT, FOX, KINTNER,

PLOTKIN & KAHN

1815 H Street, N. W.
Washington, D. C. 20006

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ARGUMENT

One theme prevailing throughout the briefs of both Respondents invites initial comment. Respondents assert that the certification authority of the Washington Metropolitan Area Transit Commission (WMATC) will be exercised in a spirit of comity and will not divest the Secretary of the Interior of any significant authority over the Mall area. This assertion has no support in reason or in fact. The certification authority

of WMATC, if invoked, would be pervasive. (See *Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission*, 325 F.2d 230, 234 (D.C. Cir. 1963). WMATC would seek to regulate the very matters that the Secretary has placed within his province in his contract with petitioner. (App. 67-87). As a practical matter, if WMATC chooses to defer consistently to the decisions of the Secretary then WMATC certification would be unnecessary; if WMATC seeks to contravene decisions of the Secretary then the Secretary's policies governing the National Parks would be frustrated.

1. Respondent D. C. Transit System Inc. (D. C. Transit) in its brief advances the argument that the District of Columbia Public Utilities Commission (PUC), whose authority to regulate transportation within the District of Columbia was transferred to Respondent Washington Metropolitan Area Transit Commission, acquired regulatory authority in National Park areas by the Act of February 27, 1931, 46 Stat. 1424, 1426, D. C. Code § 40-603(e).¹ This assertion flies in the face of the express reservation of exclusive jurisdiction over the National Park lands in the predecessor of the National Park Service continued from the Act of March 3, 1925, 43 Stat. 1119, 1126, D. C. Code § 40-613.

The 1931 Act was an amendment of selected provisions of the 1925 Act. See H. R. Rep. No. 2323, 71st Cong., 3d Sess., accompanying H. R. 14922 (January 21, 1931), entitled "To amend traffic acts approved March 3, 1925 and July 3, 1926, etc.," particularly at pp. 5-6. An amendatory act, by established rules of

¹ D. C. Transit Br. 15-16.

statutory construction, includes by reference the reservations of the amended legislation not inconsistent with the amendment. 1 Sutherland, *Statutory Construction*, 3d ed., §§ 1934, 1935; As this Court stated in *Markham v. Cabell*, 326 U.S. 404, 411 (1945):

"... the normal assumption is that where Congress amends only one section of the law leaving another untouched, the two were designed to function as parts of an integrated whole."

In this instance there is no indication that Congress intended to limit or impair the jurisdictional exception for the Park lands in the 1925 Act (D.C. Code § 40-613) by means of the 1931 amendment now codified as D. C. Code § 40-603(e).

2. WMATC, at pages 10 and 12-13 of its brief, argues in essence that since certain activities exempt from ICC regulation by reason of 49 U.S.C. § 303(b) were expressly exempted from WMATC regulation in the Compact, those § 303(b) activities not expressly exempted in its Compact were not intended to be exempted from regulation by WMATC. In support of this contention WMATC points out that it presently regulates certain types of transportation exempted from ICC regulation in 49 U.S.C. § 303(b). From this WMATC concludes that since the exemption in § 303(b)(4) for transportation within National Parks under authorization of the Secretary was not specifically carried forward into the Compact, such activity is subject to the regulation of WMATC.

This convoluted argument ignores a number of critical facts. First, WMATC acceded to the regulatory authority not only of the ICC but also of the Public Utilities Commission of the District of Columbia (PUC). Significantly, the PUC regulated types of

transportation within the District of Columbia which were specifically exempted from ICC regulation in 49 U.S.C. § 303(b).² Thus, WMATC's regulatory authority over certain activities specifically exempt from ICC regulation in 49 U.S.C. § 303(b) is merely the result of its acceding to the authority of the PUC and is not support for the contention of WMATC that the exemption in 49 U.S.C. § 303(b)(4) should be ignored because it was not specifically carried forward into the Compact.

Moreover, even assuming, *arguendo*, that all the exemptions in 49 U.S.C. § 303(b) were suspended in the Consent legislation of the Compact and WMATC thereby was granted new jurisdiction over some types of transportation, this would not be sufficient to confer upon WMATC jurisdiction over transportation within National Parks. The Secretary is relying upon more specific authority than the exemptions in 49 U.S.C. §§ 303(b)(4) and 309(a) to regulate activities in the National Parks. He has affirmatively been granted exclusive jurisdiction over the National Parks in the District of Columbia, and only express, affirmative action by Congress can impair his jurisdiction over those National Parks. D. C. Code §§ 8-108, 8-144; 16 U.S.C. §§ 1-3.

The correct analysis of the Compact and the Congressional legislation consenting to it clearly indicates

² Under the Act of March 4, 1913, 37 Stat. 975, as amended, D. C. Code § 43-111, the PUC was granted jurisdiction over "common carriers" which were defined to include:

"every . . . person . . . owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire."

that WMATC has no jurisdiction over the interpretive service proposed by the Secretary:

(a) Article VIII of the Compact (Pet. Br. 16a) provides that the Compact will not become effective until Congress grants WMATC jurisdiction and suspends the application of laws of the United States and the District of Columbia inconsistent with or duplicative of the provisions of the Compact.

(b) As shown in H. R. Rep. No. 1621, 86th Cong., 2d Sess. 29-30 (1960) (Pet. Br. 49a-50a), Congress, in Section 3 of the Consent legislation, 74 Stat. 1031, 1050, D. C. Code § 1-1412, granted jurisdiction over transportation activities in the area previously held by the ICC and the PUC and suspended specified provisions of the Interstate Commerce Act and the District of Columbia Code applicable to those agencies.

(c) Neither the ICC nor PUC had jurisdiction over National parks. Indeed, transportation activities in the National parks in the District of Columbia were and are expressly exempted from regulation by the ICC by reason of 49 U.S.C. §§ 303(b)(4) and 309(a)(1), and D. C. Code § 8-108, and from regulation by PUC by reason of D. C. Code §§ 8-108, 8-144 and 40-613. Thus, WMATC did not fall heir to any jurisdiction over National parks in the District from either ICC or PUC.

(d) Neither the Compact nor the Consent legislation by Congress contain any new, affirmative grant of jurisdiction over National parks to WMATC.

(e) None of the laws vesting exclusive jurisdiction over the National Parks in the District of Columbia in the Secretary of the Interior and his deputy, the Director of the National Park Service, including

49 U.S.C. §§ 303(b)(4) and 309(a), are inconsistent with or duplicative of the provisions of the Compact. Thus, WMATC cannot be said to have acquired any jurisdiction over the National Parks by reason of the suspension of laws provision of the Congressional legislation consenting to the Compact.

(f) A transfer of jurisdiction from an existing Federal regulatory agency to a new agency is never implied, particularly where the new agency is parochial in character. See *e.g.*, *United States v. Wittek*, 337 U.S. 346 (1949).

(g) Therefore WMATC has no power to regulate activities taking place within National Parks of the District of Columbia which are within the exclusive jurisdiction of the Secretary.

3. There is no rational basis for the contention of D. C. Transit that the Secretary lacks authority to provide an interpretive shuttle service on the Mall and, *a priori*, authority to procure preformance of such services by means of a concession contract.³

The National park lands in the District of Columbia are Federal property. Within these enclaves the United States exercises both the police powers of the state and the proprietary powers of a sovereign owner. *Robbins v. United States*, 284 Fed. 39, 45 (8th Cir. 1922). In the 1916 Act creating the National Park Service, Congress delegated full measure of authority over park lands to the Secretary. 16 U.S.C. §§ 1-3. The authority so conferred surely includes the power to provide an interpretive shuttle service for visitors

³ D. C. Transit Br. 25-29.

to the National Parks.⁴ In providing such a service the Secretary may either utilize his own equipment and personnel or utilize a concessioner. See *United States v. Gray Line Water Tours of Charleston*, 311 F.2d 779, 781 (4th Cir. 1962).

D. C. Transit completely misconveives the purpose and scope of the Act of August 8, 1953, 67 Stat. 495, 16 U.S.C. § 1b. The purpose of that Act was not to authorize the Secretary to conduct a for-hire transportation service wholly within Carlsbad Caverns National Park for visitors (a power he already had) but to authorize the Secretary to transport his employees from the park to their residences *outside* the park. The Carlsbad example is of no relevance here where the Secretary proposes a service to be operated wholly within a National Park enclave which is under his exclusive jurisdiction.

Parenthetically it should be noted that Respondent D. C. Transit and Respondent WMATC have taken opposing views as to the Secretary's power to operate the proposed service himself. WMATC has repeatedly conceded that the Secretary could operate the service and that his operations would be exempt from WMATC regulation.⁵

4. The District Court in its opinion held that even if the interpretive service to be performed by peti-

⁴ D. C. Transit at p. 34, f.n. 16 of its brief refers to a preliminary injunction granted by the United States District Court for the District of Columbia in *D. C. Transit System, Inc. v. Udall*, Civil No. 1122-68 on May 27, 1968. On appeal the U. S. Court of Appeals for the District of Columbia reversed the District Court and on remand the District Court dismissed the action.

⁵ See, e.g., WMATC Br. 25.

tioner for the Secretary was "transportation", it was nevertheless exempt from regulation by WMATC because it came within the "transportation by the Federal Government" exemption contained in Article XII, Section 1(a) of the Compact (Pet. Br. 18a). In contending against this position Respondent WMATC places its reliance upon authorities which are grossly inapposite.*

WMATC places its chief reliance upon *U. S. A. C. Transport, Inc. v. United States*, 203 F.2d 878, 879 (10th Cir. 1953), *cert. denied*, 345 U.S. 997 (1953). In that case the Court held that a carrier transporting goods for the U. S. Government over public highways outside Federal enclaves was not exempt from the requirement to obtain a certificate of public convenience and necessity from the ICC.

Here, however, the service to be provided by Petitioner is within the proprietary powers of the United States and the regulatory authority vested in the Secretary. The proposed service is not a service to the United States, such as was performed in the *U. S. A. C. Transport* case, but a service for and on behalf of the United States to its beneficiaries; it is the very service that the United States would otherwise perform for such beneficiaries itself.

In the portion of the *U. S. A. C. Transport* opinion quoted by WMATC the Court expressly noted that the activities which were the subject of that case did not fall within any of the exemptions set forth in 49 U.S.C. § 303(b). Here the services of Petitioner would be exempt by reason of § 303(b)(4).

* WMATC Br. 22-27.

If the services of Petitioner constitute "transportation" then clearly such transportation is "transportation by the Federal Government" within the meaning of the Compact.

5. Respondent D. C. Transit overreaches in its description of the scope of the protection from competition granted it in Section 3 of its Franchise. Act of July 24, 1956, 70 Stat. 598 (Pet. Br. 37a-38a). Section 3 provides that "no *competitive . . . bus line . . .* for the transportation of passengers of the character *which runs over a given route on a fixed schedule* shall be established . . . without the prior issuance of a certificate by [WMATC] to the effect that the competitive line is necessary for the convenience of the public." (Emphasis added). Transit points out some significant distinctions between regular route and irregular route operations at page 36 of its brief. These distinctions indicate, and apparently Transit concedes,⁷ that even if the proposed interpretive service were subject to WMATC certification requirements it could not be described as a regular route operation because (a) although petitioner may operate according to pre-arranged schedules, such schedules may be varied without WMATC approval, and (b) although petitioner may generally follow an established route, such routes may be varied without WMATC approval.

The case of *Bingler Vacation Tours v. United States*, 132 F. Supp. 793 (D.N.J., 1955), *affirmed*, 350 U.S. 921 (1955), cited by D. C. Transit at page 36 of its brief,

⁷ On page 34 of its brief Transit states that the proposed service will duplicate its irregular route sightseeing service but thereafter inconsistently contends that the proposed service should be treated as a "regular route" operation.

provides strong support for the holding of the District Court below regarding the limited scope of the protection afforded D. C. Transit in § 3 of its Franchise. In *Bingler*, the court explains that "regular route" transportation involves expeditious passenger transportation between two points whereas irregular route transportation must include "something substantial" in addition to "bare expeditious transportation" between two points. 132 F. Supp. at 795. The proposed service is an interpretive tour of the central Mall area at a speed not to exceed ten miles an hour. The interpretations to be presented by bilingual guides are "something substantial" in addition to bare transportation. Passage in an articulated tram proceeding through the Mall at a maximum speed of ten miles an hour cannot be considered expeditious transportation. In this context the proposed service must be found to be an "irregular route."

Moreover, the language of *Bingler* clearly supports the District Court's finding that the phrase "over a given route on a fixed schedule" is descriptive of a regular route operation, and, therefore, the protection

of § 3 of Transit's franchise is limited to Transit's regular route operations.

Respectfully submitted,

JEFFREY L. NAGIN
ALLEN E. SUSMAN
9601 Wilshire Boulevard
Beverly Hills, California 90210

RALPH S. CUNNINGHAM, JR.
THOMAS P. MEEHAN
1815 H Street, N. W.
Washington, D. C. 20006

Of Counsel:

Attorneys for Petitioner

ROSENFELD, MEYER & SUSMAN
9601 Wilshire Boulevard
Beverly Hills,
California 90210

ARENT, FOX, KINTNER,
PLOTKIN & KAHN
1815 H Street, N. W.
Washington, D. C. 20006

October, 1968

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SUPREME COURT OF THE UNITED STATES

No. 19.—OCTOBER TERM, 1968.

Universal Interpretive Shuttle Corporation, Petitioner, v. Washington Metropolitan Area Transit Commission et al.	}	On Writ of Certiorari to the United States Court of Appeals for the District of Colum- bia Circuit.
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[November 25, 1968.]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Secretary of the Interior is responsible for maintaining our national parks, and for providing facilities and services for their public enjoyment through concessionaires or otherwise.¹ In meeting this responsibility, he has entered a contract with petitioner to conduct guided tours of the Mall, a grassy park located in the center of the City of Washington and studded with national monuments and museums. Visitors to the Mall may board petitioner's open "minibuses" which travel among the various points of interest at speeds under 10 miles per hour. Guides on the bus and at certain stationary locations describe the sights. Visitors may disembark to tour the museums, boarding a later bus to return to the point of departure.

Suit was brought by the Washington Metropolitan Area Transit Commission (hereafter WMATC) to enjoin petitioner from conducting tours of the Mall without a certificate of convenience and necessity from the WMATC. Carriers permitted by WMATC to provide

¹ 16 U. S. C. §§ 1, 175, 20 (1964 & Supp. III). This responsibility is met principally through the National Park Service, which was created in the Act of August 25, 1916, c. 408, § 1, 39 Stat. 535, as an agency of the Department of the Interior. Since there is no conflict between them, we shall refer directly to the Secretary of the Interior rather than to the Director of the National Park Service.

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mass transit and sightseeing services in the City of Washington intervened as plaintiffs, and the United States appeared as *amicus curiae*. The concessionaire and the United States contend that the Secretary's authority over national park lands, and in particular his grant of "exclusive charge and control" over the Mall dating from 1898,² permit him to contract for this service without interference. The carriers and WMATC argue that the interstate compact which created the WMATC implicitly limited the Secretary's authority over the Mall, and gave rise to dual jurisdiction over these tours in the Secretary and the WMATC. One carrier, D. C. Transit System, Inc., also argues that its franchise limits the Secretary's power. In a detailed opinion the District Court dismissed the suit. The Court of Appeals reversed without opinion. We granted certiorari and, having heard the case and examined the web of statutes on which it turns, we reverse, finding the Secretary's exclusive authority to contract for services on the Mall undiminished by the compact creating WMATC or by the charter granted a private bus company.

I.

That the Secretary has substantial power over the Mall is undisputed. The parties agree that he is free to enter the contract in question. They also agree that he is free to exclude traffic from the Mall altogether, or selectively to exclude from the Mall any carrier licensed

² In the Act of July 1, 1898, c. 543, § 2, 30 Stat. 570, Congress placed the District of Columbia parks under the "exclusive charge and control" of the United States Army Chief of Engineers. This authority was transferred in the Act of February 26, 1925, c. 339, 43 Stat. 983, to the Director of Public Buildings and Public Parks of the National Capital. And in Executive Order No. 6166, June 10, 1933, 8. Doc. No. 69, 73d Cong., 1st Sess., § 2 (1933), this authority finally devolved upon the agency now called the National Park Service. Act of March 2, 1934, c. 38, § 1, 48 Stat. 389.

by the WMATC or following WMATC instructions. Moreover, the parties agree that the Secretary could operate the tour service himself without need to obtain permission from anyone.² Yet the WMATC argues that before the Secretary's power may be exercised through a concessionaire, the consent of the WMATC must be obtained.

This interpretation of the statutes involved would result in a dual regulatory jurisdiction overlapping on the most fundamental matters. The Secretary is empowered by statute to "contract for services . . . provided in the national parks . . . for the public . . . as may be required in the administration of the National Park service . . ." Act of May 26, 1930, c. 324, § 3, 46 Stat. 382, 16 U. S. C. § 17b (1964). Moreover, he is "to encourage and enable private persons and corporations . . . to provide and operate facilities and services which he deems desirable . . ." Pub. L. 89-249, § 2, 79 Stat. 969 (1965), 16 U. S. C. § 20a (Supp. III 1968). Congress was well aware that the services provided by these national park concessionaires include transportation. Hearings on H. R. 5796, 5872, 5873, 5886, and 5887 before the Subcommittee on National Parks of the House Committee on Interior and Insular Affairs, 88th Cong., 2d Sess., 151-159 (1964). In this case the Secretary concluded that there was a public need for a motorized, guided tour of the grounds under his control, and that petitioner was most fit to provide it.

The WMATC, however, also asserts the power to decide whether this tour serves "public convenience and necessity," and the power to require the concessionaire to "conform to the . . . requirements of the Commission" and the "terms and conditions" which it may

² D. C. Transit System, Inc., an intervening carrier, contends otherwise. But that position is not directly at issue on our view of the case.

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impose. Pub. L. 86-794, Tit. II, Art. XII, § 4 (b), 74 Stat. 1037 (1960). The Secretary's contract leaves the tour's route under his control, but the WMATC would in its certificate specify the "service to be rendered and the routes over which" the concessionaire might run within the Mall. Pub. L. 86-794, Tit. II, Art. XII, § 4 (d)(1), 74 Stat. 1037 (1960). Moreover, the WMATC might require the provision of additional service on or off the Mall and forbid the discontinuance of any existing service. Pub. L. 86-794, Tit. II, Art. XII, §§ 4 (e) and (i), 74 Stat. 1038-1039 (1960). The contract with the Secretary provides fare schedules, pursuant to statutory authority in the Secretary to regulate the concessionaire's charges. Pub. L. 89-249, § 3, 79 Stat. 969 (1965), 16 U. S. C. § 20b (Supp. III 1968). The WMATC would have the power to "suspend any fare, regulation, or practice" depending on the WMATC's views of the financial condition, efficiency, and effectiveness of the concessionaire and the reasonableness of the rate. Pub. L. 86-794, Tit. II, Art. XII, § 6, 74 Stat. 1040-1041 (1960). And under the same section the WMATC could set whatever fare it found reasonable, although a profit of 6½% could not be prohibited. The Secretary is given statutory authority to require the keeping of records by the concessionaire and to inspect those records, and the Comptroller General is required to examine the concessionaire's books every five years. Pub. L. 89-249, § 9, 79 Stat. 971 (1965), 16 U. S. C. § 20g (Supp. III 1968). The WMATC would also have the power to require reports and to prescribe and have access to the records to be kept. Pub. L. 86-794, Tit. II, Art. XII, § 10, 74 Stat. 1042-1043 (1960). Finally, the Secretary is given by statute the general power to specify by contract the duties of a concessionaire, 16 U. S. C. §§ 17 (b), 20-20g (1964 and Supp. III); the WMATC

would claim this power by regulation and rule. Pub. L. 86-794, Tit. II, Art. XII, § 15, 74 Stat. 1045 (1960).

We cannot ascribe to Congress a purpose of subjecting the concessionaire to these two separate masters, who show at the outset their inability to agree by presence on the opposite sides of this lawsuit. There is no indication from statutory language or legislative history that Congress intended to divest the Secretary partly or wholly of his authority in establishing the WMATC. When the WMATC was formed there was in the statute books, as there is now, a provision that the "park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service." Act of July 1, 1898, c. 543, § 2, 30 Stat. 570, as amended, D. C. Code § 8-108 (1967). He was, and is, explicitly "authorized and empowered to make and enforce all regulations for the control of vehicles and traffic." Act of June 5, 1920, c. 235, § 1, 41 Stat. 898, D. C. Code § 8-109 (1967). And this extends to sidewalks and streets which "lie between and separate the said public grounds." Act of March 4, 1909, c. 299, § 1, 35 Stat. 994, D. C. Code § 8-144 (1967).⁴ The creation of the Public Utilities Commission—the predecessor of the WMATC—was not intended "to interfere with the exclusive charge and control heretofore committed to" the predecessor of the National Park Service. Act of

⁴ The Secretary's power does not extend beyond these limits, however. In order to institute a transportation service from the Mall to a proposed Visitors' Center in Union Station he sought specific authorization from Congress to add to and confirm his existing authority and provide a service embracing both the Mall and its surroundings. S. Rep. No. 959, 90th Cong., 2d Sess., 8-10 (1968). Congress simply directed him to study the transportation needs of the entire area. Pub. L. 90-264, Tit. I, § 104, 82 Stat. 43, 44 (1968); S. Rep. No. 959, 90th Cong., 2d Sess., 3 (1968); H. R. Rep. No. 810, 90th Cong., 1st Sess., 5 (1967).

March 3, 1925, c. 443, § 16 (b), 43 Stat. 1126, as amended, D. C. Code § 40-613 (1967).

In this context the WMATC was established. After World War II, metropolitan Washington had expanded rapidly into Maryland and Virginia. The logistics of moving vast numbers of people on their daily round became increasingly complicated, and increasingly in need of coordinated supervision. Congress therefore gave its consent and approval through a joint resolution to an interstate compact which "centralizes to a great degree in a single agency . . . the regulatory powers of private transit now shared by four regulatory agencies." S. Rep. No. 1906, 86th Cong., 2d Sess., 2 (1960). These four agencies were "the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission." Pub. L. 86-794, 74 Stat. 1031 (1960). The Secretary was not included in this listing. Moreover, Congress specifically provided that nothing in the Act or compact "shall affect the normal and ordinary police powers . . . of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of the streets, highways, and other vehicular facilities . . ." ⁵ Finally, the House Report on the compact lists the federal legislation which was suspended to give effect to the compact, and the laws giving exclusive control of the

⁵ Pub. L. 86-794, § 3, 74 Stat. 1050 (1960). The term "police power" is a vague one which "embraces an almost infinite variety of subjects." *Munn v. Illinois*, 94 U. S. 113, 145 (1876) (economic regulation of grain storage an aspect of police power). It is broad enough to embrace the full range of the Secretary's power over the Mall, which even prior to the compact was ordinarily directed to ends quite different from that of the surrounding municipalities in regulating their streets. The Secretary sought explicit recognition of these differences through use of more specific language in the compact, but his clarification was not adopted. H. R. Rep. No. 1621, 86th Cong., 2d Sess., 20, 48-49, (1960).

Mall to the Secretary are not on the list. H. R. Rep. No. 1621, 86th Cong., 2d Sess., 29-30 (1960).

There is thus no reason to ignore the principle that repeals by implication are not favored⁶ or to suspect that the Congress, in creating the WMATC, disturbed the exclusivity of the Secretary's control over the Mall either by extinguishing entirely his power to contract for transportation services or by burdening the concessionaire with two separate agencies engaged in regulating precisely the same aspects of its conduct. Congress was endeavoring to simplify the regulation of transportation by creating the WMATC, not to thrust it further into a bureaucratic morass. It therefore established the WMATC to regulate the mass transit of commuters and workers. A system of minibuses, proceeding in a circular route around the Mall at less than 10 miles per hour, and stopping from time to time to describe the sights before disgorging most passengers where it picked them up, serves quite a different function.⁷ The Mall is, and was intended to be, an expansive, open sanctuary in the midst of a metropolis; a spot suitable for Americans to visit to examine the historical artifacts of their country and to reflect on monuments to the men and events of its history. The

⁶ *E. g.*, *Wood v. United States*, 16 Pet. 342, 363 (1842); *FTC v. A. P. W. Paper Co.*, 328 U. S. 193, 202 (1946).

⁷ This transportation is undertaken by contract with the Federal Government to serve a purpose of the Federal Government, and so might be thought to fall within the specific exemption from the compact for transportation by the Federal Government. Pub. L. 86-794, Tit. II, Art. XII, § 1 (a)(2), 74 Stat. 1036 (1960). Moreover, it is not primarily designed to transport people "between any points" but rather back to the same point of departure, and might therefore be exempted from the WMATC's jurisdiction. Pub. L. 86-794, Tit. II, Art. XII, § 1 (a), 74 Stat. 1035 (1960). But we find it unnecessary to reach these arguments, which would involve much more severe limits on the power of the WMATC throughout the city.

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Secretary has long had exclusive control of the Mall and ample power to develop it for these purposes. We hold that the WMATC has not been empowered to impose its own regulatory requirements on the same subject matter.

II.

If the WMATC is without jurisdiction to issue a certificate of convenience and necessity in this case, as we have found, then the D. C. Transit System's interpretation of its franchise as protecting it from any uncertified sightseeing service on the Mall would give it an absolute monopoly of service there: the WMATC, lacking jurisdiction over the Mall, would have no authority to certify another carrier. The Secretary, if D. C. Transit is right, would have to take D. C. Transit or no one. Nothing in the statute confers so rigid a monopoly.

Section 1 of D. C. Transit's franchise, Pub. L. 84-757, Tit. I, pt. 1, c. 669, § 1 (a), 70 Stat. 598 (1956), confers the power to operate a "mass transportation system." * That this does not include sightseeing is clearly shown by the separate grant of power to operate "charter or sightseeing services" in § 6, 70 Stat. 599 (1956). * The section giving

* "There is hereby granted to D. C. Transit System, Inc. . . . a franchise to operate a mass transportation system of passengers for hire within the District of Columbia . . . the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax in the Commonwealth of Virginia and the counties of Montgomery and Prince Georges in the State of Maryland . . . *Provided*, That nothing in this section shall be construed to exempt the Corporation from any law or ordinance of the Commonwealth of Virginia or the State of Maryland or any political subdivision of such Commonwealth or State, or of any rule, regulation, or order issued under the authority of any such law or ordinance, or from applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder."

* "The Corporation is hereby authorized and empowered to engage in special charter or sightseeing services subject to compliance with applicable laws, rules and regulations of the District of Columbia

D. C. Transit a measure of exclusivity is § 3, 70 Stat. 598 (1956), which protects it from any uncertified "competitive . . . bus line" for the "transportation of passengers of the character which runs over a given route on a fixed schedule" ¹⁰ In determining what is "competitive" one must refer back to the sections which grant the franchise.

Even if §§ 1 and 3 together would protect "mass transportation" on the Mall from uncertified competition, and even if § 3 protects § 6 activity, it does not follow that D. C. Transit has a monopoly over sightseeing on the Mall. Section 6 explicitly saves the "laws . . . of the District of Columbia," including the "exclusive charge and control" of the Secretary over the Mall. D. C. Code § 8-108 (1967). D. C. Transit admits the Secretary could exclude its sightseeing service from the Mall; if so, surely the franchise protection does not extend there. Moreover, §§ 3 and 6 together cannot confer a monopoly of Mall sightseeing both because this would involve an impairment of the Secretary's power under District law contrary to § 6, and because it would be unreasonable to construe the protection of § 3 against carriers uncertified by the WMATC to apply where the WMATC has no powers of certification.

And even were § 3 so construed, its protection against "transportation of passengers of the character which runs

and of the municipalities or political subdivisions of the States in which such service is to be performed, and with applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder."

¹⁰ "No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia . . . to the effect that the competitive line is necessary for the convenience of the public."

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over a given route on a fixed schedule" was evidently aimed at commuter service whose most important qualities are speed and predictability; not the service here whose most important qualities are interesting dialogue and leisurely exposure of the rider to new and perhaps unexpected experiences. The agenda of the tour will be varied by the Secretary according to the events of the day. The franchise does not protect D. C. Transit against competition in this sort of service on the Mall.

We reverse the judgment of the Court of Appeals and reinstate the judgment of the District Court. If the Congress, which has the matter before it, wishes to clarify or alter the relationship of these statutes and agencies, it is entirely free to do so.

Reversed and remanded.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 19.—OCTOBER TERM, 1968.

Universal Interpretive Shuttle Corporation, Petitioner, v. Washington Metropolitan Area Transit Commission et al.	} On Writ of Certiorari to the United States Court of Appeals for the District of Colum- bia Circuit.
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[November 25, 1968.]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs, dissenting.

We have said over and again that we do not sit to review decisions on local law by District of Columbia courts where the reach of that law is confined to the District. *District of Columbia v. Pace*, 320 U. S. 698, 702; *Busby v. Electric Utilities Union*, 323 U. S. 72, 75.

That law is not only peculiarly local; it is a compendium of a variety of laws drawn from numerous sources,* with which the district judges are much more familiar than are we. No legal problem is more obviously peculiar to the District than the one posed by the present case. Traffic, including the movement of tourists, is a special concern of local government. The District Court held that the Secretary of the Interior, not WMATC, was the appropriate licensing authority. The Court of

*The law of the District of Columbia is (1) the principles and maxims of equity as they existed in England and in the Colonies in 1776; (2) the common law of England and the Acts of Parliament which were in effect in the Colonies in 1776 (and which were not locally inapplicable); (3) the laws of Virginia and Maryland as they existed on February 27, 1801 (2 Stat. 103); (4) the Acts of the Legislative Assembly created by the Act of February 21, 1871 (16 Stat. 419); (5) all Acts of Congress applicable to the District. See District of Columbia Code (1940 ed.), Tit. 1-24, p. IX *et seq.*; Comp. Stat. D. C. 1887-1889, pp. V-VI.

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Appeals on a two-to-one vote reversed but did not file an opinion because "the interests of the parties and of the public would be better served" by a prompt disposition of the case. The Court of Appeals *en banc*, two judges dissenting, denied a petition for rehearing.

The contrariety of view below suggests that this question of local law is not free from doubt. Certainly it is not a case where the decision is so palpably wrong as to make the exceptional case for review by this Court. Nor is this question of local law so enmeshed with constitutional questions as to make appropriate its resolution here. See *District of Columbia v. Little*, 339 U. S. 1, 4, n. 1; *District of Columbia v. Thompson Co.*, 346 U. S. 100.

These considerations make much more appropriate here than in *Fisher v. United States*, 328 U. S. 463, 476 (from which the quotation is taken), the following observation:

"Matters relating to law enforcement in the District are entrusted to the courts of the District. Our policy is not to interfere with the local rules of law which they fashion, save in exceptional situations where egregious error has been committed.

"Where the choice of the Court of Appeals of the District of Columbia in local matters between conflicting legal conclusions seems nicely balanced, we do not interfere."

The present case could not be more precisely described.